

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 779

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE, PETITIONER

vs.

PHILIP L. GERHARDT

No. 780

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE, PETITIONER

vs.

BILLINGS WILSON

No. 781

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE, PETITIONER

vs.

JOHN J. MULCAHY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 10, 1938
CERTIORARI GRANTED FEBRUARY 26, 1938

BLANK

PAGE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 779

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE, PETITIONER

vs.

PHILIP L. GERHARDT

No. 780

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE, PETITIONER

vs.

BILLINGS WILSON

No. 781

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE, PETITIONER

vs.

JOHN J. MULCAHY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

INDEX

| | Original | Print |
|--|----------|-------|
| Proceedings before United States Board of Tax Appeals..... | 1 | 1 |
| Docket Entries—No. 77375..... | 1 | 1 |
| Docket Entries—No. 77377..... | 4 | 3 |
| Docket Entries—No. 80769..... | 8 | 5 |
| Petition—No. 77375..... | 11 | 6 |
| Exhibit A—Notice of deficiency..... | 16 | 8 |
| Answer—No. 77375..... | 19 | 10 |
| Petition—No. 77377..... | 21 | 10 |
| Exhibit A—Notice of deficiency..... | 26 | 12 |

II

| Proceedings before United States Board of Tax Appeals—Con. | Original | Print |
|--|----------|-------|
| Answer—No. 77377..... | 30 | 14 |
| Petition—No. 80769..... | 31 | 15 |
| Exhibit A—Notice of deficiency..... | 39 | 18 |
| Answer—No. 80769..... | 42 | 20 |
| Findings of Fact and Opinion, Sternhagen, M..... | 43 | 21 |
| Judgment—No. 77375..... | 78 | 38 |
| Judgment—No. 77377..... | 79 | 39 |
| Judgment—No. 80769..... | 80 | 39 |
| Respondent's motion to amend the findings of fact in the consolidated cases..... | 81 | 40 |
| Respondent's motion for reconsideration..... | 121 | 59 |
| Petitioners' motion in opposition to amendment of findings of fact, including taxpayers' motion for additional findings of fact..... | 126 | 61 |
| Notes on petitioners' proposed findings of fact..... | 135 | 65 |
| Petitioners' proposed findings of fact..... | 137 | 65 |
| Petitioners' motion in opposition to commissioner's motion for a reconsideration..... | 208 | 100 |
| Order denying motion to amend findings..... | 214 | 103 |
| Order denying motion for reconsideration..... | 216 | 104 |
| Petition for review and assignments of error—No. 77375..... | 218 | 104 |
| Notice of filing petition for review—No. 77375..... | 234 | 112 |
| Petition for review and assignments of error—No. 77377..... | 236 | 112 |
| Notice of filing petition for review—No. 77377..... | 252 | 120 |
| Petition for review and assignments of error—No. 80769..... | 254 | 120 |
| Notice of filing petition for review—No. 80769..... | 270 | 128 |
| Stipulation to consolidate as a single record and to print statement of evidence but once..... | 272 | 128 |
| Statement of evidence..... | 274 | 129 |
| Caption..... | 274 | 129 |
| Stipulation of facts..... | 276 | 130 |
| List of exhibits..... | 341 | 162 |
| Modification of paragraph 98 (a) of stipulation of facts..... | 342 | 162 |
| Stipulation re exhibit L to stipulation of facts..... | 343 | 163 |
| Recital as to Respondent's exhibits A, B, and C..... | 343 | 163 |
| Stipulation re opposition to Port Authority's proposed program..... | 344 | 163 |
| Testimony of Philip L. Gerhardt..... | 346 | 164 |
| Stipulation re "Comprehensive Plan"..... | 365 | 175 |
| Testimony of Billings Wilson..... | 367 | 176 |
| Approval of statement of evidence by counsel..... | 471 | 230 |
| Order settling statement of evidence..... | 472 | 230 |
| Order for consolidation of causes on review, and for inclusion in record of but one statement of evidence..... | 473 | 231 |
| Præcipe for record..... | 475 | 232 |
| Clerk's certificate [omitted in printing]..... | 478 | 233 |
| Proceedings in U. S. C. C. A., Second Circuit..... | 480 | 233 |
| Opinion, per curiam..... | 480 | 233 |
| Judgment—Commissioner is Gerhardt..... | 481 | 234 |
| Judgment—Commissioner is Wilson..... | 483 | 234 |
| Judgment—Commissioner is Mulcahy..... | 485 | 235 |
| Clerk's certificate [omitted in printing]..... | 487 | 235 |
| Orders allowing certiorari..... | 488 | 235 |

1 Before United States Board of Tax Appeals

Docket No. 77375

PHILIP L. GERHARDT, Petitioner

v

COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket entries

Appearances: For Taxpayer: Julius Henry Cohen, Austin J. Tobin, Esq., Wilbur La Roe, Jr., Esq. For Comm'r: Walter W. Kerr, Esq., John D. Kiley, Esq., Francis H. Urell, Esq., Geo. D. Brabson, Esq.

1934

Sept. 19—Petition received and filed. Taxpayer notified. (Fee paid.)

Sept. 19—Copy of petition served on General Counsel.

Nov. 14—Answer filed by General Counsel.

Nov. 21—Copy of answer served on taxpayer.

1935

Aug. 16—Motion for circuit hearing at New York City filed by General Counsel.

Aug. 19—Hearing set Sept. 4, 1935, on motion.

Sept. 4—Hearing had before Mr. Trammell on motion for circuit hearing. Granted.

Sept. 4—Order granting motion and placing on the N. Y. C. Circuit Calendar, entered.

Dec. 24—Hearing set for week of 2/3/36 in New York, N. Y.

2

1936

Feb. 3—Hearing had before Mr. Sternhagen, Div. 10 on merits. Submitted. Motion to consol. with 75916-77375-77 incl. and 80769 granted. Cont'd from 2/3/36 to 2/4/36, to 2/6/36. Appearances of Austin J. Tobin & Wilbur La Roe, Jr., Esqs., filed at hearing. Stipulation of facts filed and exhibits filed. Original brief of petitioner filed. Reply to Commissioner's brief due 4/22/36. Commissioner's brief due 3/23/36.

Feb. 21—Transcript of hearings Feb. 3/4/5/6, 1936, filed.

Mar. 23—Brief filed by General Counsel. 4/15/36 copies received.

- Apr. 11—Reply brief filed by taxpayer. 4/11/36 copy served.
 Apr. 11—Proposed Findings of Fact filed by taxpayer. 4/11/36 copy served.
 Apr. 24—Motion to correct errors in respondent's brief filed by General Counsel. 4/27/36 Granted.
 Apr. 25—Motion for leave to file memorandum reply brief, reply brief lodged, filed by General Counsel. 4/27/36 Granted.
 July 28—Motion to correct transcript filed by taxpayer 7/29/36 Granted.
 Oct. 28—Findings of fact and opinion rendered, Mr. Sternhagen, Div. 10. Judgment will be entered for the petitioner.
 Oct. 31—Judgment entered, Div. 10. Mr. Sternhagen.
 3 Nov. 20—Motion to amend findings of fact and for specific findings of fact filed by General Counsel. 11/21/36 copy served.
 Nov. 27—Motion to vacate decision and reconsider opinion filed by General Counsel. Copy served 11/28/36.
 Dec. 22—Motion to deny motion filed on Nov. 20, 1936, filed by taxpayer. 12/24/36 copy served.
 Dec. 22—Motion to deny motion filed on Nov. 27, 1936, filed by taxpayer. 12/24/36 copy served.
 Dec. 23—Order denying motion to amend findings, entered.
 Dec. 23—Order denying motion for consideration, entered.

1937

- Jan. 25—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by General Counsel.
 Feb. 1—Proof of service filed by General Counsel.
 Mar. 15—Motion for extension to June 25, 1937, to complete and transmit record, filed by General Counsel.
 Mar. 15—Order enlarging time to June 25, 1937, to prepare and deliver record, entered.
 Apr. 12—Stipulation for review by the United States Circuit Court of Appeals, 2nd Circuit, filed.
 June 23—Motion for extension to Sept. 1, 1937, to complete and transmit record, filed by General Counsel.

4 1937

- June 23—Order enlarging time to 9/1/37 to prepare and deliver record, entered.
 July 2—Praecipe with proof of service thereon filed.
 July 2—Agreed statement of evidence lodged.
 July 2—Stipulation to consolidate as a single record and to print statement of evidence but once filed.

July 16—Copy of order from 2nd Circuit, consolidating appeals as a single record and taking printed statement of evidence but once for all cases and transmitting all exhibits in physical form, filed.

July 23—Agreed statement approved and ordered filed.

Before United States Board of Tax Appeals

Docket No. 77377

BILLINGS WILSON, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances: For Taxpayer: Julius Henry Cohen, Austin J. Tobin, Esq., Wilbur LaRoe, Esq. For Com'r: John D. Kiley, Esq., Geo. D. Brabson, Francis H. Urell, Walter W. Kerr, Esq.

5 1934

Sept. 19—Petition received and filed. Taxpayer notified. (Fee paid.)

Sept. 19—Copy of petition served on General Counsel.

Nov. 14—Answer filed by General Counsel.

Nov. 21—Copy of answer served on taxpayer.

Dec. 24—Hearing set for week of 2/3/36, New York.

1936

Feb. 3—Hearing had before Mr. Sternhagen, Div. 10, on merits. Submitted. Motion to consol. with 77375-76, 75816, and 80769, granted. Heard 2/3/36-2/4/36-2/5/36 & 2/6/36. Appearances of Austin J. Tobin & Wilbur La Roe, Jr., Esqs. Stipulation of Facts & Exhibits filed. Original brief of petitioner's filed. Commissioner's brief due 3/23/36. Reply and respondent's brief due 4/22/36.

Feb. 21—Transcripts (4) of hearings of Feb. 3-4-5-6, 1936, filed.

Mar. 23—Brief filed by General Counsel. 4/15/36—16 copies received.

Apr. 11—Reply brief filed by taxpayer.

Apr. 11—Proposed findings of facts filed by taxpayer.

Apr. 24—Motion to correct errors in respondent's brief filed by General Counsel. 4/27/36 Granted.

Apr. 25—Motion for leave to file reply brief filed by General Counsel. Reply brief lodged.

Apr. 27—Motion to file reply brief granted—ordered filed and served.

6 1936

July 28—Motion to correct transcript filed by taxpayer 7/29/36 Granted.

Oct. 28—Findings of fact and opinion rendered, Mr. Sternhagen, Div. 10. Judgment will be entered for the petitioner.

Oct. 31—Judgment entered, Div. 10. Mr. Sternhagen.

Nov. 20—Motion to amend findings of fact and for specific findings of fact filed by General Counsel. 11/21/36 copy served.

Nov. 27—Motion to vacate decision and reconsider opinion filed by General Counsel. 11/28/36 copy served.

Dec. 22—Motion to deny motion filed on Nov. 20, 1936, filed by taxpayer. 12/24/36 copy served.

Dec. 22—Motion to deny motion filed on Nov. 27, 1936, filed by taxpayer. 12/24/36 copy served.

Dec. 23—Order denying motion for reconsideration, entered.

Dec. 23—Order denying motion to amend findings, entered.

1937

Jan. 25—Petition for review by United States Circuit Court of Appeals, 2nd Circuit, with assignments of error filed by General Counsel.

Feb. 1—Proof of service filed by General Counsel.

Mar. 15—Motion for extension to June 25, 1937, to complete and transmit record filed by General Counsel.

7 Mar. 15—Order enlarging time to June 25, 1937, to prepare and transmit record, entered.

Apr. 12—Stipulation for review by the United States Circuit Court of Appeals, 2nd Circuit, filed.

June 22—Motion for extension to Sept. 1, 1937, to complete and transmit record filed by General Counsel.

June 22—Order enlarging time to 9/1/37 to prepare and deliver record, entered.

July 2—Praecipe with proof of service thereon filed.

July 2—Agreed statement of evidence lodged.

July 2—Stipulation to consolidate as a single record and to print statement of evidence but once filed.

July 16—Copy of order from 2nd Circuit consolidating appeals as a single record and taking printed statement of evidence but once for all cases and transmitting all exhibits in physical form, filed.

July 23—Agreed statement approved and ordered filed.

Before United States Board of Tax Appeals

Docket No. 80769

JOHN J. MULCAHY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances: For Taxpayer: Julius Henry Cohen, Austin J. Tobin, Esq., Wilbur LaRoe, Esq. For Comm'r: John D. Kiley, Esq., Walter W. Kerr, Esq., Geo. D. Brabson, Esq., Francis H. Urell.

1935

July 15—Petition received and filed. Taxpayer notified. (Fee paid.)

July 15—Copy of petition served on General Counsel.

Aug. 23—Answer filed by General Counsel.

Aug. 27—Copy of answer served on taxpayer.

Dec. 24—Notice of hearing at New York City week of Feb. 3, 1936.

1936

Feb. 3—Hearing had before Mr. J. M. Sternhagen, Div. 10. Submitted on the merits. Motion to consol. with 75816-77375-6-7 granted, for hearing. Continued to 2/4/36 and to 2/5/36, and to 2/6/36; appearances of Austin J. Tobin and Wilbur LaRoe, Jr., Esqs., filed. Original brief of petitioner filed. Reply to respondent due Apr. 22, 1936. Respondent's brief due Mar. 23, 1936.

Feb. 21—Transcript of hearings Feb. 3-4-5-6, 1936, filed.

Mar. 23—Brief filed by General Counsel. 4/15/36—16 copies received.

Apr. 11—Reply brief filed by taxpayer.

Apr. 11—Proposed findings of fact filed by taxpayer.

Apr. 24—Motion to correct errors in respondent's brief filed by General Counsel.

Apr. 25—Motion for leave to file reply brief filed by General Counsel. Reply brief lodged. 7/27/36 Granted.

July 28—Motion to correct transcript filed by taxpayer. 7/29/36 Granted. Let minutes be so corrected.

Oct. 28—Findings of fact and opinion rendered, Mr. Sternhagen, Div. 10. Judgment will be entered for petitioner.

Oct. 31—Judgment entered, Mr. J. M. Sternhagen, Div. 10.

- Nov. 20—Motion to amend findings of fact and to make specific findings of fact as set forth in this motion filed by General Counsel. Copy served 11/21/36.
- Nov. 27—Motion to vacate decision and reconsider opinion filed by General Counsel. 11/28/36 copy served.
- Dec. 22—Motion to deny motion filed on Nov. 20, 1936, filed by taxpayer. 12/22/36 copy served.
- 10 Dec. 22—Motion to deny motion filed on Nov. 27, 1936, filed by taxpayer. 12/22/36 copy served.
- Dec. 23—Order denying motion for reconsideration, entered.
- Dec. 23—Order denying respondent's motion to amend findings, entered.

1937

- Jan. 25—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by General Counsel.
- Feb. 1—Proof of service filed by General Counsel.
- Mar. 15—Motion for extension to June 25, 1937, to complete and transmit record filed by General Counsel.
- Mar. 12—Order enlarging time to June 25, 1937, to complete and transmit record, entered.
- Apr. 12—Stipulation for review by the Circuit Court of Appeals, 2nd Circuit, filed.
- June 22—Motion for extension to Sept. 1, 1937, to complete and transmit record filed by General Counsel.
- June 22—Order extending time to 9/1/37 to complete and transmit record, entered.
- July 2—Praecipe with proof of service thereon filed.
- July 2—Agreed statement of evidence lodged.
- July 2—Stipulation to consolidate as one record and to print statement of evidence but once filed.
- 11 July 16—Copy of order from 2nd Circuit consolidating appeal as a single record and printing but one statement of evidence and transmitting all exhibits in physical form, filed.
- July 23—Agreed statement approved and ordered filed.

Before United States Board of Tax Appeals

Docket No. 77375

[Title omitted.]

Petition

Filed Sept. 19, 1934

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue

in his notice of deficiency (IT: AR: B-1; GLN-90D), dated July 31, 1934, and as a basis for this proceeding alleges as follows:

1. The petitioner is a citizen of the United States of America and resides at 135 Eastern Parkway, in the Borough of Brooklyn, County of Kings, State of New York.

12 2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the taxpayer on July 31, 1934.

3. The taxes in controversy are income taxes for the calendar year 1933, for which year no tax was assessed against petitioner and for which an alleged deficiency of \$232.74 is claimed by the Treasury Department.

4. The determination of tax set forth in said notice of deficiency is based upon the following error, to wit, that the statement annexed to said notice of deficiency alleges that

"From information furnished by the internal revenue agent in charge at Newark, New Jersey, it appears that you received salary of \$8,137.50 from The Port of New York Authority which was not included as taxable income.

"Since it appears that this amount is not exempt from Federal income tax your income has been increased by \$8,137.50."

5. The facts upon which the petitioner relies as a basis for this petition are as follows:

(a) The Port of New York Authority was, during the period of petitioner's employment therewith including the entire calendar year 1933, and now is, a political subdivision and governmental instrumentality of the States of New York and New Jersey.

13 (b) The Port of New York Authority was, during said period, and is now engaged in proper and essential governmental functions of the States of New York and New Jersey in the construction, maintenance, and operation of highway bridges and tunnels and the Inland Terminal hereinafter referred to, which it was directed to build by the States of New York and New Jersey in partial effectuation of a comprehensive plan for the development of the Port of New York adopted by the said States.

(c) The petitioner was and has been regularly employed by the said The Port of New York Authority since May 1931, through and including the entire calendar year 1933, down to the date of this petition, receiving an annual compensation therefor, payable twice monthly throughout said period.

(d) The duties of said employment, at all times hereinbefore mentioned, consisted in the performance of all tasks as might from time to time be assigned to petitioner by the General Manager of The Port of New York Authority in connection with the construction, operation, and maintenance by the said The Port of New York Authority of a certain Inland Terminal Building, located in the block bounded by Eighth and Ninth Avenues, Fifteen and Sixteen Streets,

in the Borough of Manhattan, City, County, and State of New York, known as "Inland Terminal No. 1," and in connection with other projects and works of the aforesaid The Port of New York Authority.

14 (e) The duties of said employment, at all times herein mentioned, consisted in the rendition of prescribed services and not the accomplishment of specific objects and the services of the petitioner were continuous and not occasional or temporary.

(f) The petitioner at all times herein mentioned was an employee of The Port of New York Authority aforesaid and not an independent contractor.

6. WHEREFORE, the petitioner prays that the Board may hear this proceeding and may determine that the salary received by the petitioner as an employee of The Port of New York Authority during the year 1933 was not taxable and that the reported deficiency in the sum of Two hundred thirty-two and 74/100 Dollars (\$232.74) is erroneous and that the notice thereof and the assessment of any tax thereon be set aside.

Dated New York, September 4, 1934.

(Sgd.) JULIUS HENRY COHEN,

Julius Henry Cohen,

Attorney for Petitioner,

Office & P. O. Address, 111 Eighth Avenue,
Borough of Manhattan, New York City, N. Y.

15 [Duly sworn to by Philip Gerhardt; jurat omitted in printing.]

16 Exhibit A, annexed to foregoing petition

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, July 31, 1934.

Address reply to Commissioner of Internal Revenue and refer to
Mr. PHILIP L. GERHARDT,
135 Eastern Parkway, Brooklyn, New York.

SIR: You are advised that the determination of your income tax liability for the year 1933, discloses a deficiency of \$232.74 as shown in the statement attached.

In accordance with Section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested
17 to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will

expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner.
By CHAS T. RUSSELL,
Deputy Commissioner.

Enclosures:

Statement.
Form 870.

STATEMENT

IT:AR:B-1.
GLN-90D.

In re: Mr. Philip L. Gerhardt, 135 Eastern Parkway, Brooklyn,
New York

Year, 1933; income tax liability, \$232.74; income tax assessed, none; deficiency, \$232.74.

From information furnished by the internal revenue agent in charge at Newark, New Jersey, it appears that you received
18 salary of \$8,137.50 from The Port of New York Authority which was not included as taxable income.

Since it appears that this amount is not exempt from Federal income tax your income has been increased by \$8,137.50.

The amount of \$30.00 representing excess taxes erroneously included in schedule 17 as contributions has been eliminated and transferred to schedule 14 resulting in no net change in your income.

The adjustments in your income and the computation of your tax liability are as follows:

| | | |
|-------------------------------|--------------|--------------|
| Net Income reported on return | | (\$173. 70) |
| Add: | | |
| 1. Salary | \$8, 137. 50 | |
| 2. Contribution | 30. 00 | 8, 167. 50 |
| Total | | \$7, 993. 80 |
| Less: 3. Taxes increased | | 30. 00 |
| Adjusted net income | | \$7, 963. 80 |

COMPUTATION OF TAX

| | |
|---|--------------|
| Ordinary net income adjusted | \$7, 963. 80 |
| Less: Personal exemption and credit for 2 dependents \$3,300.00 | 3, 300. 00 |
| Net income subject to normal tax | \$4, 663. 80 |
| 19 Normal tax at 4% on \$4,000.00 | \$160. 00 |
| Normal tax at 8% on \$663.80 | 53. 10 |
| Surtax on \$7,963.80 | 19. 64 |
| Total | \$232. 74 |
| Total amount assessable | \$232. 74 |
| Tax previously assessed | None |
| Deficiency | \$232. 74 |

Before United States Board of Tax Appeals

Docket No. 77375

[Title omitted.]

Answer

Filed Nov. 14, 1934

The Commissioner of Internal Revenue, by his attorney Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, for answer to the petition filed in the above-entitled case, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
 - 20 2. Admits the allegations contained in paragraph 2 of the petition.
 3. Admits the allegations contained in paragraph 3 of the petition.
 4. Denies that the respondent erred in the manner alleged in paragraph 4 of the petition.
 5. Denies the allegations of fact contained in subparagraphs (a) to (f), inclusive, of paragraph 5 of the petition.
- Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.
- WHEREFORE, it is prayed that petitioner's appeal be denied.

(Signed) ROBERT H. JACKSON,
*Assistant General Counsel
 for the Bureau of Internal Revenue.*

Of Counsel:

GEORGE D. BRABSON,
Special Attorney, Bureau of Internal Revenue.

MFH 10/9/34.

21 Before United States Board of Tax Appeals

Docket No. 77377

[Title omitted.]

Petition

Filed Sept. 19, 1934

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:B-1 GLN-90D), dated July 31, 1934, and as a basis for this proceeding alleges as follows:

1. The petitioner is a citizen of the United States of America and resides at 1235 Park Avenue, in the Borough of Manhattan, City, County, and State of New York.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the taxpayer on July 31, 1934.

3. The taxes in controversy are income taxes for the calendar year 1933 for which an alleged deficiency of \$733.14 and penalty of \$183.29 is claimed by the Treasury Department.

4. The determination of tax set forth in said notice of deficiency and penalty is based upon the following error, to wit, that the statement annexed to said notice of deficiency alleges that

22 "From information furnished by the internal revenue agent in charge at Newark, New Jersey, it appears that you received salary of \$14,625.00 from The Port of New York Authority. Since this amount is not exempt from Federal income tax it has been included with fees of \$150.00, interest of \$18.46 and dividends of \$194.42 received by you and your wife, resulting in a total taxable income of \$12,915.43 after allowance of expenses of \$1,346.29 interest of \$275.00, taxes of \$314.16 and contributions of \$137.00

* * * * *

"In accordance with section 3176 of the Revised Statutes a 25% penalty for failure to file a return has been added to and made a part of the deficiency."

5. The facts upon which the petitioner relies as a basis for this petition are as follows:

(a) The Port of New York Authority was, during the period of petitioner's employment therewith including the entire calendar year 1933, and now is, a political subdivision and governmental instrumentality of the States of New York and New Jersey.

(b) The Port of New York Authority was, during said period and is now engaged in proper and essential governmental functions of the States of New York and New Jersey in the construction, maintenance, and operation of highway bridges, tunnels, and other facilities hereinafter referred to, which it was directed to build by the States of New York and New Jersey in partial effectuation of the comprehensive plan for the development of the Port of New York adopted by the said States.

23 (c) The petitioner was and has been regularly and continuously employed by the said The Port of New York Authority since June 29, 1922, through and including the entire calendar year 1933 down to the present date, receiving an annual compensation therefor, payable twice monthly throughout said period.

(d) The duties of said employment at all times hereinbefore mentioned consisted in the performance of all tasks as might from time to time be assigned to petitioner by the General Manager or by the Commissioners of The Port of New York Authority in connection with the construction, operation, and maintenance by The Port of New York Authority of certain bridges and tunnels between the States of New York and New Jersey known as the George Washington

Bridge, the Holland Tunnel, the Bayonne Bridge, the Goethals Bridge, the Outerbridge Crossing, and the construction of the proposed Midtown Hudson Tunnel and in connection with the construction, operation, and maintenance by The Port of New York Authority of a certain inland terminal building known as "Inland Terminal No. 1" and in connection with other projects and works of the aforesaid The Port of New York Authority.

(e) The duties of said employment at all times herein mentioned consisted in the rendition of prescribed services and not the accomplishment of specific objects, and the services of the petitioner were continuous and not occasional or temporary.

(f) The petitioner at all times herein mentioned was an employee of The Port of New York Authority aforesaid and not an independent contractor.

(g) Neither the gross income nor the net income of petitioner, exclusive of the salary received as an employee of The Port of New York Authority, was sufficient to require the filing of an income tax return for the calendar year 1933 by the petitioner.

WHEREFORE, the petitioner prays that the Board may hear this proceeding and may determine that the salary received by the petitioner as an employee of The Port of New York Authority during the year 1933 was not taxable and that the petitioner was not required to file a tax return for said year and that the reported deficiency in the sum of Seven hundred thirty-three and 14/100 Dollars (\$733.14) and the alleged penalty thereon in the sum of One hundred eighty-three and 29/100 Dollars (\$183.29) is erroneous and that the notice thereof and the assessment of any tax thereon be set aside.

Dated New York, September 4, 1934.

JULIUS HENRY COHEN,

(Sgd.)

JULIUS HENRY COHEN,

Attorney for Petitioner,

Post Office Address & Office, 111 Eighth Avenue,

Borough of Manhattan, New York City.

25 [Duly sworn to by Billings Wilson; jurat omitted in printing.]

26 *Exhibit A, annexed to foregoing petition*

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, July 31, 1934.

Address reply to Commissioner of Internal Revenue and refer to Mr. BILLINGS WILSON,

1235 Park Avenue, New York, New York.

SIR: You are advised that the determination of your income tax liability for the year 1933, discloses a deficiency of \$733.14 and penalty of \$183.29 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is

hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner.

By CHAS. T. RUSSELL,
Deputy Commissioner.

Enclosures:
Statement.
Form 870.

STATEMENT

IT:AR:B-1.
GLN-90D.

In re: Mr. Billings Wilson, 1235 Park Avenue, New York, New York

INCOME TAX LIABILITY

Year, 1933; income tax liability, \$733.14; income tax assessed, none; deficiency, \$733.14; penalty, \$183.29.

28 From information furnished by the internal revenue agent in charge at Newark, New Jersey it appears that you received salary of \$14,625.00 from The Port of New York Authority. Since this amount is not exempt from Federal income tax it has been included with fees of \$150.00, interest of \$18.46 and dividends of \$194.42 received by you and your wife, resulting in a total taxable income of \$12,915.43 after allowance of expenses of \$1,346.29 interest of \$275.00, taxes of \$314.16 and contributions of \$137.00.

A synopsis of your income and deductions therefrom and the computation of your tax liability are as follows:

| | |
|--|---------------|
| Schedule 1: Salary—The Port of New York Authority--- | \$14, 625. 00 |
| Concert Fees ----- | 150. 00 |
| | <hr/> |
| | \$14, 775. 00 |
| Expenses: | |
| Auto expense----- | \$252. 00 |
| Concert Manager----- | 750. 00 |
| Advertising ----- | 344. 29 |
| | <hr/> |
| | 1, 346. 29 |
| | <hr/> |
| Schedule 3: Interest on bank deposits, notes, corporation bonds----- | \$13, 428. 71 |
| | 18. 46 |

| | |
|---|-------------|
| Schedule 10: Dividends | 194.42 |
| Schedule 12: Total | \$13,041.59 |
| Schedule 13: Interest | \$275.00 |
| Schedule 14: Taxes paid | 314.16 |
| Schedule 17: Contributions | 137.00 |
| Schedule 19: Total deductions | 726.16 |
| Schedule 20: Net income | \$12,915.43 |
| 29 COMPUTATION OF TAX | |
| Ordinary net income adjusted | \$12,915.43 |
| Less: | |
| Dividends | \$194.42 |
| Personal exemption and credit for one dependent | 2,900.00 |
| | 3,094.42 |
| Net income subject to normal tax | \$9,821.01 |
| Normal tax at 4% on \$4,000.00 | \$160.00 |
| Normal tax at 8% on \$5,821.01 | 465.68 |
| Surtax on \$12,915.43 | 107.46 |
| Total | \$733.14 |
| Tax liability | \$733.14 |
| Plus: 25% penalty for delinquency | 183.29 |
| Total amount assessable | \$916.43 |
| Tax previously assessed | None. |
| Penalty previously assessed | None. |
| Deficiency | \$916.43 |

In accordance with section 3176 of the Revised Statutes a 25% penalty for failure to file a return has been added to and made a part of the deficiency.

30 Before United States Board of Tax Appeals

Docket No. 77377

[Title omitted.]

Answer

Filed Nov. 14, 1934.

The Commission of Internal Revenue by his attorney, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, for answer to the petition filed in the above entitled appeal, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
2. Admits the allegations contained in paragraph 2 of the petition.
3. Admits the allegations contained in paragraph 3 of the petition.
4. Denies that the respondent erred in the manner alleged in paragraph 4 of the petition.
5. Denies the allegations of fact contained in subparagraphs (a) to (g), inclusive, of paragraph 5 of the petition.

31 Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that petitioner's appeal be denied.

(Signed) ROBERT H. JACKSON,
Assistant General Counsel
for the Bureau of Internal Revenue.

Of Counsel:

GEO. D. BRABSON,
Special Attorney,
Bureau of Internal Revenue.

Before United States Board of Tax Appeals

Docket No. 80769

[Title omitted.]

Petition

Filed July 15, 1935.

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (I.T.: A.P.: A-2, ABB-90D) dated April 24, 1935, and, as a basis for his proceeding, alleges as follows:

1. The petitioner is an individual, a citizen of the United States of America, now residing at Blairstown, County of Warren, State of New Jersey, with a business address at 111 Eighth Avenue, New York, N. Y. Petitioner is designated in said Notice as "J. J. Mulcahy, 19 West Street, New York, N. Y." which designation corresponds with the customary signature of the petitioner, but petitioner's full name is "John J. Mulcahy" and not J. J. Mulcahy, as set forth in said Notice of Deficiency.

2. Notice of Deficiency (a copy of which is attached and marked Exhibit A) was mailed to the taxpayer on April 24, 1935.

3. The taxes in controversy are income taxes for the calendar year 1932 and for which an alleged deficiency of \$695.00 and penalty of \$173.75, making a total of \$868.75, is claimed by the Treasury Department.

4. The determination of tax set forth in said Notice of Deficiency is based on the following errors:

First: The statement annexed to said Notice of Deficiency alleges that

33 "A return has been prepared under authority of section 3176 of the Revised Statutes, as the records of this office indicate that you filed no return for the year 1933"

although no obligation on your petitioner to file a return either for the year 1932 or said year 1933 is prescribed either by law or by regulation made under authority of law.

Second: The statement annexed to said Notice of Deficiency alleges that

"Information on file in this office indicates that you received compensation of \$10,950.00 from The Port of New York Authority in the year 1932"

and proceeds to compute a deficiency in tax on this income in disregard of the fact that said income, although received by your petitioner in said year, was not and is not subject to Federal income tax.

Third: The form of report prepared by the Commissioner, in behalf of the petitioner, is based upon insufficient information and fails to allow to the petitioner deductions from gross and net income to which petitioner would be entitled in the event that it should be held that income received by the petitioner from The Port of New York Authority is subject to Federal tax.

5. The facts upon which the petitioner relies as a basis for this petition are as follows:

(a) The Port of New York Authority was, during the 34 period of petitioner's employment therewith including the entire calendar year 1932, and now is, a political subdivision and governmental instrumentality of the States of New York and New Jersey, created by Compact between the States of New York and New Jersey, signed April 30, 1921, pursuant to Chapter 151 of the Laws of New Jersey, 1921, and Chapter 154 of the Laws of New York, 1921, approved by the Congress of the United States (Public Resolution No. 17—67th Congress; S. J. Res. 88 [August 23, 1921]).

(b) The Port of New York Authority was, during said period and is now engaged in proper, usual and essential governmental functions of the States of New York and New Jersey in the construction, maintenance and operation of highway bridges, tunnels and other facilities hereinafter referred to, which it was directed to build by the States of New York and New Jersey in partial effectuation of the Comprehensive Plan for the development of the Port of New York adopted by the said States.

(c) The petitioner was and has been regularly and continuously employed by the said The Port of New York Authority since June 1st, 1928. Petitioner was originally employed as Assistant to the Chief Executive Officer. On May 8th, 1930, upon the change of the title of the Chief Executive Officer to General Manager, petitioner was elected an Assistant General Manager of The Port of New York Authority, which office petitioner has held down to the present date. In connection with both positions, petitioner has devoted his entire time to his employment by the Port Authority, taking no 35 other employment, and has received an annual compensation therefor, payable twice monthly throughout said period.

(d) The duties of said employment at all times hereinbefore mentioned consisted in the performance of all tasks as might from time to time be assigned to petitioner by the General Manager or by the Commissioners of The Port of New York Authority in connection with the effectuation of the Comprehensive Plan for the development of the Port of New York District, adopted by the States of New York and New Jersey (Chapter 9 of the Laws of New Jersey, 1922, and Chapter 43 of the Laws of New York, 1922) and approved by the Congress of the United States (Public Resolution No. 66—67th Congress; H. J. Res. 337 [July 1, 1922]), including the construction, operation and maintenance by The Port of New York Authority of certain bridges and tunnels between the States of New York and New Jersey known as the George Washington Bridge, the Holland Tunnel, the Bayonne Bridge, the Goethals Bridge, the Outerbridge Crossing, and the construction of the new Midtown Hudson Tunnel and in connection with the construction, operation and maintenance by The Port of New York Authority of a certain inland terminal building known as "Inland Terminal No. 1," and other projects and works of port development and improvement of the aforesaid The Port of New York Authority, undertaken pursuant to said Compact and Comprehensive Plan.

36 (e) The duties of said employment at all times herein mentioned, consisted in the rendition of prescribed services and not the accomplishment of specific objects and the services of the petitioner were continuous and not occasional or temporary.

(f) The petitioner at all times herein mentioned was an employee of The Port of New York Authority aforesaid and not an independent contractor.

(g) Neither the gross income nor the net income of petitioner, exclusive of the salary received as an employee of The Port of New York Authority, was sufficient to require the filing of an income tax return for the calendar year 1932 by the petitioner.

(h) Both the petitioner and The Port of New York Authority were, prior to the date set by law for the filing of income tax reports for the year 1932, advised by counsel that the salary received by the petitioner as an employee of The Port of New York Authority was not subject to Federal income tax.

(i) That no personal inquiry was made, either of the petitioner or any authorized representative of the petitioner, by the Commissioner of Internal Revenue or by a collector or deputy collector or any representative of the Commissioner, or of the collector or the deputy collector, as to whether petitioner was married or had any dependents in said calendar year 1932 or as to whether petitioner was entitled to any deductions against either net or gross income which

37 might reduce the amount of his tax liability for said year in the event that it should be held that the income received by petitioner from The Port of New York Authority is subject to Federal tax. That your petitioner and representatives of your petitioner were ready and willing to give to the Commissioner of

Internal Revenue, to the Collector of Internal Revenue or any deputy collector or any authorized representative of said Commissioner, or collector or deputy collector, such information as they or any of them might desire in connection with the preparation of a form of report, but neither your petitioner nor any authorized representative of the petitioner was ever asked to give such information.

(j) The petitioner is entitled to the following exemptions and deductions against any income received from petitioner in said calendar year 1932 which may be held to be taxable;

| | |
|---|---------|
| (1) Personal exemption, as married and living with the wife during the entire taxable year..... | \$2,500 |
| (2) Deduction for interest paid..... | 285 |
| (3) Deduction for taxes paid..... | 380 |
| (4) Deduction for contributions..... | 900 |
| Total | \$4,065 |

Wherefore, the petitioner prays that the Board may hear this proceeding and may determine that the salary received by the petitioner as an employee of The Port of New York Authority, during the year 1932, was not taxable and that the petitioner was not required to file a tax return for said year and that the reported deficiency in the sum of \$695.00 and the alleged penalty thereon in the sum of \$173.75, is erroneous and that the Notice thereof and the assessment of any tax thereon be set aside. In the alternative, and in the event that this Board determines that the petitioner was required to file a report for the calendar year 1932, the petitioner prays that the deductions and allowances against income as set forth in this petition be allowed by this Board.

Dated New York, June 25th, 1935.

(Signed) JULIUS HENRY COHEN,

Julius Henry Cohen,

Attorney for Petitioner,

Office & P. O. Address, 111 Eighth Avenue,

Borough of Manhattan, New York City.

[Duly sworn to by John J. Mulcahy; jurat omitted in printing.]

39 Exhibit A, annexed to foregoing petition

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, Apr. 24, 1935.

Address reply to Commissioner of Internal Revenue and refer to Mr. J. J. MULCAHY,

19 West Street, New York, New York.

SIR: You are advised that the determination of your income tax liability for the year(s) 1932, discloses a deficiency of \$695.00 and penalty of \$173.75 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not

counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of

IT:C:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner,
By CHAS. T. RUSSELL,
Deputy Commissioner.

Enclosures:
Statement.
Form 870.

STATEMENT

IT:AR:A-2.
ABB-90D.

In re: Mr. J. J. Mulcahy, 19 West Street, New York, New York

INCOME TAX LIABILITY

Year 1932; income tax liability \$695.00, penalty \$173.75; income tax assessed, none; deficiency \$695.00, penalty \$173.75.

Information on file in this office indicates that you received compensation of \$10,950.00 from the Port of New York Authority in the year 1932.

The deficiency in tax on this income was computed as follows:

| | |
|--------------------------------|-------------|
| Compensation | \$10,950.00 |
| Less: Personal exemption | 1,000.00 |
| Balance subject to normal tax | \$9,950.00 |
| Normal tax at 4% on \$4,000.00 | \$160.00 |
| Normal tax at 8% on \$5,950.00 | 476.00 |
| Surtax on \$10,950.00 | 59.00 |
| Total tax | \$695.00 |
| Tax assessed | none |
| Deficiency in tax | \$695.00 |
| 25% penalty for delinquency | \$173.75 |

A return has been prepared under authority of section 3176 of the Revised Statutes, as the records of this office indicate that you filed no return for the year 1933.

42

Before United States Board of Tax Appeals

Docket No. 80769

[Title omitted.]

Answer

Filed August 24, 1935

The Commissioner of Internal Revenue, by his attorney, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, for answer to the petition filed in the above-entitled case, admits and denies as follows:

1, 2, 3. Admits the allegations contained in paragraphs 1, 2, and 3 of the petition.

4. Denies the allegations contained in subparagraphs First, Second, and Third of paragraph 4 of the petition.

5. Denies the allegations contained in subparagraphs (a) to (j), inclusive, of paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.

43 Wherefore, it is prayed that petitioner's appeal be denied.

(Signed) ROBERT H. JACKSON,
Assistant General Counsel
for the Bureau of Internal Revenue.

Of Counsel:

GEORGE D. BRABSON,
VERNON F. WEEKLEY,
Special Attorneys, Bureau of Internal Revenue.

VFW:MFH.

8/22/35.

Before United States Board of Tax Appeals

MONTGOMERY B. CASE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

PHILIP L. GERHARDT, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

E. MORGAN BARRADALE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

BILLINGS WILSON, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

JOHN J. MULCAHY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 75816, 77375, 77376, 77377, 80769

Findings of fact and opinion

Promulgated October 28, 1936

- 44 The compensation of officers and employees of the Port of New York Authority held immune from Federal income tax. Julius Henry Cohen, Esq., Austin J. Tobin, Esq., and Wilbur La Roe, Jr., Esq., for the petitioners. George D. Brabson, Esq., Francis H. Uriell, Esq., and John D. Kiley, Esq., for the respondent.

Respondent determined the following deficiencies and penalties in petitioners' income taxes:

| | Year | Deficiency | Penalty |
|--------------------------|------|------------|----------|
| Montgomery B. Case..... | 1931 | \$551.00 | ----- |
| Philip L. Gerhardt..... | 1933 | 232.74 | ----- |
| E. Morgan Barradale..... | 1933 | 439.57 | \$100.89 |
| Billings Wilson..... | 1933 | 733.14 | 183.29 |
| John J. Mulcahy..... | 1932 | 695.00 | 173.75 |

The petitioners were employees of the Port of New York Authority, and assail the inclusion in their income of the compensation paid to them by the Port Authority.

Findings of fact

Montgomery B. Case is a resident of Englewood, New Jersey; Philip L. Gerhardt, of Brooklyn, New York; E. Morgan Barradale, of South Orange, New Jersey; Billings Wilson, of New York, New York; and John J. Mulcahy, of New York, New York. All were employees of the Port of New York Authority in the respective taxable years.

The Port of New York Authority (herein called the Port Authority) is a corporate body organized pursuant to a compact entered into between the States of New York and New Jersey on April 30, 1921,¹ to which Congress consented by a resolution approved August 23, 1921.² After reciting the great growth of commerce in the port of New York, and the benefit of cordial cooperation between the States of New York and New Jersey in the encouragement of capital investment and the formulation and execution of necessary physical plans through a joint agency, the compact created and defined the limits of a port district, and provided for the creation of the Port Authority as a body, corporate and politic, consisting of 12 commissioners:

"* * * with full power and authority to purchase, construct, lease and/or operate any terminals or transportation facility within

¹ Ch. 154, Laws of New York, 1921; ch. 151, Laws of New Jersey, 1921.

² Public Resolution No. 17, 67th Cong. (S. J. Res. 88).

said district; and to make charges for the use thereof; and for any of such purposes to own, hold, lease and/or operate real or personal property, to borrow money and secure the same by bonds or by mortgages upon any property held or to be held by it. * * *

Under the terms of the compact, the Port Authority was not empowered to pledge the credit of either state except by legislative permission; facilities owned or operated by it were made subject
46 to regulatory laws and regulating commissions as if owned or operated by a private corporation, and the powers of any municipality to develop or improve port and terminal facilities were left unimpaired. A plan for comprehensive port development was to be adopted by the legislatures of the two states, and the Port Authority was directed to make plans from time to time, supplementary or amendatory thereto; to make recommendations to the legislatures or to Congress for the better conduct of the port's commerce and for the increase and improvement of its transportation and terminal facilities, and to institute or intervene in proceedings before the Interstate Commerce Commission and like bodies to further such improvements. It was authorized to make suitable rules and regulations, subject to constitutional limitations and the exercise of the power of Congress, for the conduct of navigation and commerce, to be effective upon the concurrence or authorization of the state legislatures. It was authorized to provide penalties for violations thereof, and they have been provided and incorporated into the states' criminal laws. It was given power to fix tolls and charges for the use of all its facilities. Salaries and other expenses incurred by it were to be appropriated by the state legislatures until its operating revenues were adequate to meet them, and power to incur obligations prior to such appropriations was denied.

This compact, which amended and supplemented a former one entered into between New York and New Jersey in 1834, was induced
47 by the necessity, widely recognized, for joint state action in the development as a whole of the Port of New York which lies partly within the jurisdiction of each state. It was evolved after a series of efforts by the two states. Between 1911 and 1914 New Jersey appointed several successive commissions to study the port problem in cooperation with a New York commission. After reports by these commissions, New Jersey made efforts to secure a readjustment of freight rates to the port district, which led to a proceeding before the Interstate Commerce Commission, New York Harbor Case, 47 I. C. C. 643, and aroused considerable opposition from the State and City of New York and various civic and commercial organizations. As a result of discussion of the desirability of unifying the port's transportation system, the New York-New Jersey Port and Harbor Development Commission was created by the legislative action of each state in 1917, and \$450,000 was appropriated for its study of port and harbor conditions. After a thorough survey the Commission made a report to the legislatures in 1918, recommending a bistate corporate agency to carry out a comprehensive plan of port

development, and a bistate legislative commission was appointed to cooperate with the former commission in a revision of its tentative proposals. This joint commission submitted a voluminous report in 1919, which, after reviewing the growing commerce of the port, the inefficiency of its terminal facilities, and the resulting hardship on its eight million inhabitants, described the port problem as primarily a railroad problem, and urged the adoption of an improvement plan comprising a complete reorganization of railroad terminal facilities, a joint operation and connection of railway belt lines, pier improvements, the establishment of food distribution stations, warehouses, highways, etc. The adoption of this program was urged by two successive governors of New York as a public necessity, and the requisite acts for the compact creating the Port Authority were finally passed by the legislatures of both states in April 1921.

Pursuant to the mandate of the compact, the Port Authority investigated conditions within the port district, and recommended to the governors of the two states a comprehensive plan of port improvement in a report dated December 21, 1921. This comprehensive plan was adopted by acts of the legislatures of each state passed and approved in 1922.³ It embraced nine "principles to govern development," as follows: (1) Unification of terminal operations within the port district; (2) consolidation of shipments to eliminate duplication of effort and inefficient loading; (3) routing of commodities to avoid centers of congestion; (4) establishment of union terminal stations; (5) coordination of port and terminal facilities; (6) tunnels and bridges for freight; (7) Federal improvement of channels; (8) highways for distribution by trucks; and (9) methods for prompt relief pending future development. More specifically, the plan called for tunnels and bridges connecting New York and New Jersey, suitable markets, union inland terminal stations and warehouses in Manhattan, numerous belt railway lines and connections within the port district, an automatic electric system connecting Manhattan with the middle belt line and railroads, and union terminal stations in Manhattan to contain storage space and space for other facilities.

The Port Authority was further directed by the acts to proceed in accordance with the plan as rapidly as might be economically possible, with all necessary constitutional powers except that of levying taxes or assessments, to request Congress to make appropriations for deepening and widening channels, to apply to all Federal agencies for assistance, to cooperate with state highway commissioners so that state trunk highways might fit into the plan, to render such advice, suggestions, and assistance to municipal officials as would permit local and municipal port improvements to fit into the plan. Section 8 provides further:

* * * The bonds or other securities issued by the port authority shall at all times be free from taxation by either state. The

³Ch. 43, Laws of New York, 1922; ch. 9, Laws of New Jersey, 1922.

port authority shall be regarded as the municipal corporate instrumentality of the two states for the purpose of developing the port and effectuating the pledge of the states in the said compact, but it shall have no power to pledge the credit of either state or to impose any obligation upon either state or upon any municipality, except as and when such power is expressly granted by statute, or the consent by any such municipality is given."

Congress approved the plan by Joint Resolution of July 1, 1922, expressly reserving Federal rights and jurisdiction over the region affected.

50 Thereafter the governors of the two states advised the Port

Authority that they favored the construction at the earliest possible moment of bridges and tunnels between New York and New Jersey. The Port Authority proceeded to make preliminary studies of traffic conditions, building costs, and other pertinent questions of various bridges and tunnels, and in its consideration of the several proposed projects, held public hearings after published notice, which were attended by the public and representatives of various interested organizations, who frequently had conflicting views. It conferred and cooperated with commissions and agencies which had studied or were interested in the particular project. It considered prior studies and reports of individuals and commissions related thereto, and made full reports to the governors and legislatures of its findings and recommendations.

After these studies and reports, the state legislatures in 1924 passed acts authorizing the Port Authority to construct, operate, maintain, and own two bridges with the necessary approaches across the Arthur Kill, one between Perth Amboy, New Jersey, and Tottenville, New York,⁴ and one between Elizabeth, New Jersey, and Howland Hook, New York,⁵ and appropriated \$200,000 therefor. The Port Authority thereupon made borings, surveys, and engineering studies

51 as to the character and location of the bridges, thoroughly canvassed local sentiment, attended meetings of local interests and meetings with committees appointed by the mayors of the three municipalities concerned, made counts of the vehicular traffic crossing all ferries on the Arthur Kill and Kill van Kull, investigated the records of the ferry companies, and made other pertinent studies. In 1925 construction of the proposed bridges was approved by the War Department, and in 1926 commenced. The bridges, known as the Outerbridge Crossing Bridge and the Goethals Bridge, respectively, were completed on June 29, 1928, at a cost of over \$17,000,000, financed by advances of \$4,000,000 to the Port Authority by the two states and the sale of "New York-New Jersey Interstate Bridge Bonds—Series A" in the amount of \$14,000,000. The bridge approaches were designed in cooperation with the state highway commissions to fit into the highway system and allow a circular flow of traffic at full capacity. In March 1931 the Port Authority en-

⁴ Ch. 230, Laws of New York, 1924; ch. 125, Laws of New Jersey, 1924.

⁵ Ch. 186, Laws of New York, 1924; ch. 140, Laws of New Jersey, 1924.

gaged in the operation of a bus service across the Goethals Bridge to maintain traffic formerly attracted by private companies which had failed.

In 1925 the legislatures of the two states similarly authorized the Port Authority to construct, operate, maintain, and own a bridge, with the necessary approaches, across the Hudson River from Manhattan to Fort Lee, New Jersey, and each appropriated \$100,000 for the preliminary studies.^a After reports to the governors, the Port Authority commenced construction in 1927, and on October 25, 1931, this bridge, known as the George Washington Bridge, was opened to traffic, having been completed at a cost of over \$57,000,000, financed by state advances of \$9,800,000 and the sale of "New York-New Jersey Interstate Bridge Bonds—Series B" in the amount of \$50,000,000.

In the construction of this bridge, the Port Authority acquired four blocks in Manhattan between 178th and 179th Streets, over which it built an elaborate system of approach ramps to Riverside Drive. It is now completing a tunnel, carrying the approaches to the east side of Manhattan, which will be dedicated to the city and used by local traffic. On the New Jersey side the approaches were arranged to merge highway routes 1, 4, and 6 into a junction, running back to forking a mile from the bridge head. The bridge has a traffic capacity for 30,000,000 vehicles annually. Its center section was left unpaved because unnecessary for present demands.

By similar legislation in 1925 the Port Authority was authorized to construct, operate, maintain, and own a bridge with the necessary approaches across the Kill van Kull from Bayonne, New Jersey, to Staten Island, New York,^b which, after studies and reports, was begun in 1928 and completed in 1931, at a cost of over \$13,000,000, financed by state advances of \$4,100,000 and the sale of "New York-New Jersey Interstate Bridge Bonds, Series C" in the amount of \$12,000,000. This is known as the Bayonne Bridge.

Its approach in Bayonne was carried across railroad yards and waterfront streets to a less congested section of the city, and in Staten Island was laid over a filled-in quarry and arranged to permit a circular flow of traffic.

The Port Authority has continuously owned, maintained, and operated these four bridges, charging tolls to defray their maintenance, operation, and general expenses and to meet interest charges and pay off the bonds, state advances, and debt service on general and refunding bonds (which, however, under existing statutes can not be issued for any facilities except four terminals), and, through its general reserve fund, debt service on its other bonds now outstanding.

In 1934, the Outerbridge Crossing and Goethals Bridges produced tolls exceeding \$400,000, paid by over 800,000 vehicles; the George Washington Bridge, \$3,300,000, paid by over 6,150,000 vehicles; and the Bayonne Bridge, \$210,000, paid by over 450,000 vehicles. The

^a Ch. 211, Laws of New York, 1925; ch. 41, Laws of New Jersey, 1925.
^b Ch. 279, Laws of New York, 1926; ch. 97, Laws of New Jersey, 1925.

rate of toll was determined by the estimated annual amount necessary to meet operating expenses and interest and to provide a net amount for application against outstanding bonds. Since the Port Authority can raise money only by the sale of its securities or state advances, these estimates were made available to bankers interested in bidding for its bonds. Income or deficits from operation have been as follows:

| 54 | Year | Goethals and Outerbridge Crossing Bridges | Washington Bridge | Bayonne Bridge |
|------|------|--|----------------------|-------------------|
| 1928 | | \$272,676.75 | | |
| 1929 | | 76,683.54 | | |
| 1930 | | 40,673.37 | | |
| 1931 | | -23,340.21 | \$504,264.08 | \$25,400.29 |
| 1932 | | -187,272.17 | 1,473,363.61 | -101,466.11 |
| 1933 | | -295,534.46 | 1,142,770.42 | -240,890.18 |
| 1934 | | -298,851.29 | 1,356,476.67 | -163,848.67 |

¹ Interest for this year was charged to investment account.

Deficits were met from a general reserve fund of the Port Authority, and, in its annual reports, were attributed to a decline in traffic caused by the depression.

In the operation of these bridges, the Port Authority maintains a uniformed police force who are designated by statute^a as regular peace and police officers of both states with the usual police power to make arrests and issue summons. Between 1928 and 1935 the Port Authority, in connection with its development of bridge and tunnel approaches, acquired apartment houses and store buildings which it rented to minimize its loss of capital investment before their demolition. These operations resulted in a net income of \$36,115.61 in 1931 and losses of \$47,356.91 and \$61,482.63 in 1932 and 1933, respectively. On December 31, 1933, it also had investments, aggregating \$10,000, in the stock of 10 wholly owned subsidiary corporations, organized to acquire property for its projects or to manage the properties acquired for bridge and tunnel approaches before their utilization as such.

After studies begun in 1906 and culminating in legislation by New York and New Jersey for the construction of an interstate vehicular tunnel under the Hudson River, the Holland Tunnel was constructed between Manhattan and New Jersey pursuant to a bistate compact of December 30, 1919, and plans evolved by the New Jersey Interstate Bridge and Tunnel Commission and the New York Interstate Bridge and Tunnel Commission. The cost of this tunnel was met by direct appropriations of New York and a bond issue of New Jersey, which has since been refunded by a bond issue of the Port Authority. It was operated by the two commissions until 1930, when each state passed an act^b merging the commissions with the Port Authority, which was thereby vested with the control, operation, and main-

^a Ch. 388, Laws of New York, 1928; ch. 113, Laws of New Jersey, 1932.
^b Ch. 421, Laws of New York, 1930; ch. 247, Laws of New Jersey, 1930.

tenance of the tunnel. In 1931 additional acts¹⁰ were passed in which, in the interest of the general public, the states agreed:

"* * * That the construction, maintenance, operation, and control of all such bridges and tunnels, heretofore or hereafter authorized by the two states, shall be unified under the port of New York authority * * *, to the end that the tolls and other revenues therefrom shall be applied so far as practicable to the costs of the construction, maintenance, and operation of said bridges and tunnels as a group and economies in operation effected, it being the policy of the two states that such bridges and tunnels shall as a group be in all respects self-sustaining."

The Holland Tunnel is producing a surplus of revenue which goes into the Port Authority's general reserve fund for application to deficits of other projects.

The state legislatures further authorized the Port Authority to make plans for and construct a second tunnel to be known as the Midtown Hudson Tunnel, a project for the study of which each had appropriated \$200,000 in 1930.¹¹ After studies and reports covering several years the Port Authority began construction in 1934, and expects to complete the work by 1938, at an estimated cost of \$37,500,000 for the southern tube. It has acquired a 100-foot strip of land one-half mile long for the tunnel's Manhattan approach at 39th Street and 10th Avenue, and property in Weehawken for an elaborate

New Jersey approach connecting with the state's highway system. The cost of construction is being met by a loan arrangement from the Federal Emergency Administration of Public Works, by virtue of which \$2,500,000 of Midtown Hudson Tunnel notes were issued to refund prior bank loans for the project and the Government purchased intallments of the aggregating \$12,300,000. In entering into this agreement, the Public Works Administration required and received the opinion of the Port Authority's general counsel that its notes were exempt from state and Federal taxation.

The Port Authority has extensively studied the port district's system of transportation, highway, and terminal facilities and methods of handling freight used by the railways, ferry companies, and other transportation agencies, and has sought methods of remedying street, highway, and waterfront congestion with the district. In its reports, which are made annually or more often, it advised the governors and legislatures of both states that it was taking steps to remedy the congestion by an integrated and coordinated system of union inland freight terminals at various points in the port district, and it has been assisted in these projects by state appropriations and requisite legislation. It referred in its 1927 report to eight inland terminals in Manhattan already operated by railroads.

The location and character of the first unit of this system, Inland Terminal No. 1, was determined after exhaustive research and studies and a public hearing at which the views of representatives of municipi-

¹⁰ Ch. 47, Laws of New York, 1931; ch. 4, Laws of New Jersey, 1931.

¹¹ Ch. 426, Laws of New York, 1930; ch. 248, Laws of New Jersey, 1930.

palities, railroads, shippers, consignees, warehousemen, civic and trade associations, property owners, and others interested were
 58 given. The Port Authority finally resolved to acquire a city block in Manhattan bounded by 15th and 16th Streets and 8th and 9th Avenues, and to erect upon it a terminal building of basements and upper stories, the basements and ground floor of which should be leased to trunk line carriers for receipt and delivery of freight and the upper floors leased for office, loft, and manufacturing purposes. The project received the approval of the governors and legislatures; and on December 31, 1930, the Port Authority entered into an agreement with the eight trunk line railroads entering the port district, after some initial reluctance on their part, to lease to them substantially all of the street and basement floors of the projected building for five years, with renewal options for nine successive five-year periods, to be used as a terminal station for the transportation, assemblage, and distribution of less than carload freight.

The Port Authority acquired the proposed site by condemnation, and erected on it a building of 15 floors, 800 feet long and 200 feet wide, covering the entire block, and known as the Port Authority Commerce Building. The basement and 95 percent of the street floor are devoted to terminal purposes under the lease as a union station, without subdivision among the carriers, and the 13 upper floors are rented for manufacturing, office, loft, and industrial business purposes. The Port Authority maintain the portions of the building used for terminal purposes, but its facilities have been operated by the lessee railways since October 1932 through a joint agent, who is not an employee of the Port Authority. Under
 59 the system adopted by the railroads, shippers deliver less than carload freight, usually in the afternoon, by truck to the terminal on a street level platform; the freight is there received by the railroads' joint labor force and conveyed to the other side of the building where shipments for each railroad are assembled and conveyed to their respective rail heads. In the morning, incoming freight is similarly delivered to the consignee's truck from the street level platform. Formerly, shippers were obliged to deliver packages for different railroads to their separate pier stations and likewise to collect in-bound freight from these widely separated points. The union terminal has lightened traffic congestion and effected substantial savings to merchants in time and trucking costs, attracting deliveries even from New Jersey, Brooklyn, and Queens. Its facilities have been planned to take care of increased business in the future, only 10 percent of its capacity being utilized at present. The first year of operation it handled 40,000 tons of freight, and it is now handling between 60,000 and 70,000 tons a year.

The railroads' pier terminals have not been eliminated because of this single union terminal, however, although some have been

closed or transferred, but the Port Authority's program contemplates a gradual elimination of the use of the piers for terminal purposes by the construction of a total of 12 union terminals in equal zones as found practicable; the erection of a second in New Jersey is now contemplated. A large percentage of these piers is owned and leased by New York City. Besides the less than carload freight, the piers also handle carload consignments and 60 perishables, which the union terminal does not receive. The

Port Authority plans to induce the roads eventually to transfer carloads to trucks on the Jersey shore, and convey them for store-door delivery in New York. Perishables and dairy products are confined by an extensive underground refrigeration system to a district in lower west Manhattan, and their handling through the inland terminal is not contemplated.

Tenants for the upper floors of the Commerce Building are solicited by real estate agents and advertising, and occupy the premises under leases, sometimes with a sliding rental scale. Its rates are somewhat higher than commercial rates for new leases, but 95 percent of available space is now rented. Offices of the Port Authority are located on the fifteenth floor. The nonterminal portion of the building is operated for the Port Authority by a superintendent and 92 men; 8 percent is rented for stores and offices and 92 percent as loft space. Its construction and rental were deemed necessary to provide sufficient revenue to make the terminal facility economically practical, for the Port Authority received no subsidy for the terminal from the states, and had to raise its \$16,000,000 cost by bonds. To sell the bonds it was necessary to show sufficient prospective revenue from the project to make them attractive.

As the keystone of its objective to simplify traffic, the Port Authority has made studies and plans to connect the railroads entering the district by a series of belt lines running through tunnels and other proposed connections. Water traffic in the port suffers interference from fog about 5 percent of the time, and from ice or ice drifts during January, February, and March. Before the opening of the Holland Tunnel there were six tubes of the Pennsylvania and the Hudson and Manhattan railroads under the Hudson River, but no vehicular highway between Manhattan and New Jersey, and ferries were taxed to capacity. Freight from New Jersey was brought by ferries to Manhattan, where it was impossible to expand the approaches, and the long lines of vehicles awaiting service caused great congestion in the adjoining streets. Of the 45 railroad terminal piers clustered around the south rim of Manhattan, 38 are still in use, and while the Holland Tunnel now draws off a great number of vehicles from this section, traffic in the port district has doubled in each of the past two decades, and the congestion remains very great. The separate operation of watercraft, moreover, by the several railroads for freight delivery entails overlappings and waste of efforts by the movement of par-

tially loaded boats, which a consolidation of marine activities would eliminate, and the Port Authority has made unsuccessful efforts to work out a coordinating scheme with the roads.

In furtherance of the proposed belt lines connecting the railroads, the Port Authority investigated the possibility of an automatic electric railway system, but abandoned it as too expensive. It next proposed the construction of a Greenville-Bayridge Tunnel to connect the roads on the two sides of the port, but after the accumulation of data and drafting of plans, the railroads declined to contract to
 62 use the tunnel, and the Port Authority then devoted its attention to the inland terminal system.

In order to improve transportation conditions, reduce living costs, and enable the Port of New York to meet the competition of other ports, the Port Authority has cooperated with the state Dock Commission in its study of long piers to accommodate large liners; and in matters of harbor modifications, such as channel widening and deepening, subject to the approval of army engineers, it has made suggestions, surveys, and taken part in hearings. It has made studies and suggestions for the coordination of railway marine activities embodied in reports submitted to the road's coordinating agents. It has complied with requests of outlying points to clear the harbor of ice by getting the use of coast guard ice-breakers and has vainly sought Federal legislation to supply more breakers. It has studied the transportation of cargoes of explosives, gasoline, and chemicals, and induced the Federal Government to make regulations for their control, which its staff assisted in framing. At the request of municipalities it has prepared reports on the location of free ports or tariff zones, and gratuitously cooperates with and advises district municipalities on port development. It has promulgated regulations concerning the storage period of freight on the railroads' piers, designed to relieve the congestion caused by a consignee's failure to remove for long periods, about which complaints had been made by shippers, inconvenienced and delayed by the accumulations. It has opposed

efforts of outports before the Shipping Board to secure New
 63 York shipping. It has participated and given evidence in actions before the Interstate Commerce Commission brought by competitive ports to obtain rates favorable to them in relation to New York rates, where the principle involved affected many commodities or a large rate adjustment.

It coordinates and assists in litigation affecting commerce, but does not supplant the efforts of the states, municipalities, and such agencies as the Chamber of Commerce, Produce Exchange, and Maritime Exchange. It has cooperated in the issuance of rules affecting navigation and commerce and has prescribed rules for the regulation of its own facilities, and further protected them by the erection of navigation lights and buoys. It has attempted to fix rates for harbor lighterage through negotiation with the railroads. It neither

owns nor operates piers, ferries, tugs, ships, or dredges, but its facilities are in competition with the ferry companies and have reduced their traffic and earnings, and one company has gone out of business. These companies either are privately owned or are operated by railroads, and in either case are subject to state and Federal taxation. The Port Authority seeks to increase the traffic over its bridges and tunnels by advertisements in journals and public places. In 1933 it actively and successfully opposed a private company's application to the War Department for a permit to construct another bridge across the Hudson.

The Port Authority's projects have been financed by state appropriations, by state advances repayable from the projects' revenue, and by issues of bonds and notes. Of the latter, series A, 64 B, and C are each secured by a first lien upon the revenue of a particular project, subject to suspension as to current revenue when an amount equal to 20 percent of the issue is accumulated in sinking or special reserve funds over and above current interest and maturities. Repayment of state advances from a bridge's revenue is subject to the prior lien of the bridge bonds. All the bonds have by contract been issued as exempt from state and Federal tax on advice of counsel that they were so exempt.

Upon issuance of its bonds, series D and E, secured by revenues of the Holland Tunnel and Inland Terminal No. 1, respectively, the Port Authority pledged its general reserve fund as security for all its outstanding issues, including prior bridge issues, and in 1935 it adopted a program for the refunding of its then outstanding obligations, aggregating \$152,000,000 (series A to E, inclusive, and Midtown Hudson Tunnel notes) through the medium of its general and refunding bonds, which are supported by a pledge of its general reserve fund and (subject to prior liens and to the repayment of state advances) by a pledge of revenues of projects now in operation or under construction. In addition, all bonds acquired pursuant to the refunding program with the proceeds of general and refunding bonds are pledged as collateral security for the latter. Each issue so pledged is to be fully retired and canceled when the entire issue has been acquired, except that no bridge issue is to be fully retired and canceled until the advances made by the state for the particular project have been liquidated or amortized.

65 The Port Authority has refunded and retired its entire issue of Midtown Hudson Tunnel notes, and is seeking to have the Public Works Administration cancel the existing loan agreement and make a grant not to exceed \$4,780,000 in aid of the tunnel's construction. Pursuant to its refunding program, the Port Authority has also refunded the following bonds, acquired for retirement, which, with the three other issues below mentioned, constituted its funded debt as of November 30, 1935, adjusted to reflect the cancellation of \$14,800,000 Midtown Hudson Tunnel notes on December

20, 1935, and the sale of \$16,500,000 general and refunding bonds on December 11:

| | Outstanding | Acquired and pledged |
|------------------------------------|--------------|----------------------|
| Series A (Arthur Kill Bridge)..... | \$12,200,000 | \$5,643,000 |
| Series B (Washington Bridge)..... | 48,420,000 | 1,580,000 |
| Series C (Bayonne Bridge)..... | 8,861,000 | 3,132,000 |
| Series D (Inland Terminal)..... | 14,820,000 | 1,180,000 |
| Series E (Holland Tunnel)..... | 46,008,000 | 992,000 |

On the same date there were outstanding general and refunding bonds, first series, 4 percent, due 1975, of \$45,331,000, and of second series, 3¾ percent, due 1965, of \$16,500,000, and series F bonds (Washington Bridge) of \$2,500,000.

66 By appropriate legislation enacted in 1934 and 1935, claims between New Jersey and the Port Authority were adjusted and liquidated by the latter's payment of \$500,000 to the former. These claims arose from advances for the George Washington Bridge, Port Authority's undertaking to bear the cost of certain highway construction, and other items.

The annual reports of the Port Authority, submitted to the governors and legislatures of New York and New Jersey, contain statements of its progress, plans, activities, and financial conditions. As here shown, all its income, revenues, and receipts are derived from the following sources: (a) Toll charges from all of its bridges and tunnels; (b) rentals of Inland Terminal No. 1 paid by railroad carriers; (c) rentals from tenants of the upper floors; (d) rentals from real estate pending its use in connection with the comprehensive plan; (e) interest from securities in which sinking, reserve, and other funds are invested; (f) revenue from operation of a bus line over the Goethals Bridge; (g) interest on bank balances; (h) miscellaneous income such as rental of telephone ducts, sales of gasoline, towing, and tire-changing charges; (i) state advances. The securities in which its several funds are invested are bonds of New York and New Jersey municipalities; it also holds bonds issued by itself. Its gross income and net income, as so shown, were as follows:

| Year | Gross income | Net income |
|-----------|----------------|----------------|
| 1931..... | \$7,367,288.39 | \$3,002,325.43 |
| 1932..... | 10,270,699.82 | 3,659,081.29 |
| 1933..... | 10,134,638.21 | 3,112,953.78 |

67 The functions of the Port Authority, as prescribed by the states' compact and statutes, are exercised by twelve commissioners, half of whom are appointed from among the resident voters of each state as their respective legislatures determine. The Commissioners take an oath of office and may be removed only upon

charges and after a hearing—in the case of New York, by the governor; in the case of New Jersey, by the state senate. Their actions are binding only after approval by a majority and the lapse of a specified period after the minutes of each meeting have been transmitted to the two governors, who have a veto power over the acts of the commissioners from their respective states. The commissioners constitute a board for the purpose of doing business and may adopt suitable bylaws for its management.

The Port Authority's facilities are subject to the jurisdiction of public service, utility, and similar state commissions in the same manner as those of a private corporation. Its bonds and certain obligations are legal investments for fiduciaries in both states, and for the protection of public funds deposited by it; the statutes of both states authorize financial institutions to give it undertakings with sureties of its approval or securities as collateral.

The Port Authority has power to make investigations in connection with its planning for port improvement, and to issue subpoenas to residents and property owners of New York, failure to comply being punishable upon the Port Authority's application to the Supreme Court. Its authorized rules for the regulation of port affairs are enforceable by mandamus, injunction, or other appropriate relief, which actions are entitled to a preference over all New York civil cases. It may institute or intervene in proceedings before the Interstate Commerce Commission, state public utility commissions, and like bodies or any other Federal, state, municipal, or local authority for the adoption and execution of physical improvements, changes in methods or rates of transportation, warehousing, docking, and lightering. It may condemn and take property through legal proceedings.

The Port Authority has no stock and no stockholders, and is not owned by any private persons or corporations. Its projects are all operated in the interest of the public, and no profits inure to the benefit of private persons. Its properties and bonds or other securities issued by it are exempt by statute from state taxation. In Public Resolution 66, 67th Congress—H. J. Resolution 337—Congress declared that its activities under the comprehensive plan

“* * * will the better promote and facilitate commerce between the States and between the States and foreign nations and provide better and cheaper transportation of property and aid in providing better postal, military, and other services of value to the Nation.” Certain statutes of New York and New Jersey relating to the various projects of the Port Authority recite that they are:

“* * * in all respects for the benefit of the people of the two states, for the increase of their commerce and prosperity and for the improvement of their health and living conditions, and the Port Authority shall be regarded as performing a governmental function in undertaking the said construction, maintenance and operation and in carrying out the provisions of law relating to the said

[bridges and tunnels] and shall be required to pay no taxes or assessments upon any of the property acquired by it for the construction, operation and maintenance of such * * *."

The States of New York and New Jersey obligated themselves to the payment of the Port Authority's administrative expenses each in the amount of \$100,000 a year until its revenues were adequate to meet them, and prohibited the incurring of obligation for salaries, office, and other administrative expenses prior to the making of such appropriations. Since 1928 employees of the Port Authority who were transferred from New York state service and were members of the state retirement system, might continue in that system. Since 1935 all employees are permitted to join it.

Montgomery B. Case was employed by the Port Authority from April 1, 1927, to December 31, 1932, as a construction engineer. He took an oath of office, was provided with a place of business and staff by the Port Authority, and had regular office hours, agreeing, however, to devote extra time to his duties when necessary without extra compensation. During 1931 he was executive
70 head of the Port Authority's construction division under the supervision of its chief engineer, and had direct charge of all construction forces working on the Washington and Bayonne Bridges and the Holland and Midtown Hudson Tunnels, making frequent reports to the chief engineer. He had no outside office or business connection and did no engineering work for anyone else. His name was on the pay roll of the Port Authority, which he was required to sign with other employees. In 1931 he received a salary of \$16,000, which the Commissioner included in his taxable income for that year.

Philip J. Gerhardt has been employed by the Port Authority since May 7, 1931, as industrial consultant. He took an oath of office, was provided with a place of business and staff by the Port Authority, and had regular office hours, agreeing, however, to devote extra time to his duties when necessary without extra compensation. During 1933 his duties comprised the designing of the Inland Terminal No. 1, from an operations standpoint, and its operation and rental under the supervision of the Port Authority's general manager, to whom he submitted monthly time reports of his work. He had no outside office or business connection. His name was on the pay roll of the Port Authority, when he was required to sign with other employees. In 1933 he received a salary of \$8,137.50, which the Commissioner included in his taxable income for that year.

E. Morgan Barradale was a member of the staff of the New York-New Jersey Interstate Bridge and Tunnel Commission from its organization in 1919 until its merger with the Port Authority on May 8, 1930, and has since been employed by the Port
71 Authority as superintendent of tunnel operations. He took an oath of office at the time of his employment by the Commission, was provided with a place of business and staff by the Port Author-

ity, and had regular office hours, agreeing, however, to devote extra time to his duties when necessary without extra compensation. During 1933 he had charge of the operation and maintenance of the Holland Tunnel and of the Port Authority employees operating it under the supervision of the assistant general manager in charge of operations, to whom he made reports of his work and time. He had no outside office or business connection except his office and position as director and president of a building and loan association. His name was on the pay roll of the Port Authority, which he was required to sign with other employees. In 1933 he received a salary of \$10,174.97, which the Commissioner included in his taxable income for that year.

Billings Wilson has been employed by the Port Authority since July 1, 1922, as assistant general manager. He took an oath of office, was provided with a place of business and staff by the Port Authority, and had regular office hours, agreeing, however, to devote extra time to his duties when necessary without extra compensation. His duties comprise administrative work in the office and inspection work in the field under the supervision of the general manager, to whom he submitted reports on various matters as required. He had no outside office or business connection. His name was on the pay roll of the Port Authority, which he was required to sign with other employees. In 1933 he received a salary of \$14,625 from the Port Authority, which the Commissioner included in his taxable income for that year.

John J. Mulcahy has been employed by the Port Authority since June 1, 1928, as assistant general manager. He took an oath of office, was provided with a place of business and staff by the Port Authority, and had regular office hours, agreeing, however, to devote extra time to his duties when necessary without extra compensation. During 1932 he supervised the Port Authority's entire personnel and acted as administrative assistant to the general manager under supervision of the latter, to whom he submitted reports on various matters as required. He had no outside office or business connection. His name was on the Port Authority's pay roll, which he was required to sign with the other employees. In 1932 he received a salary of \$10,950, which the Commissioner included in his taxable income for that year.

Opinion

STERNHAGEN. The question raised by this proceeding is whether the compensation received by an officer or employee of the Port Authority for services regularly rendered is subject to Federal income tax. The compensation was held constitutionally immune in *Leon Moisseiff*, 21 B. T. A. 515, and *Robert Carey*, 31 B. T. A. 839. *Modjeski*, an engineer of the Port Authority, was held taxable as an independent contractor. *Commissioner v. Modjeski*, 75 Fed. (2d) 468; *certiorari denied*, 295 U. S. 764. *Commissioner v. Ten Eyck*, 76 Fed.

73 (2d) 515, involved directly the Albany Port District, but the court expressly dealt with the Port Authority as of the same character. *Commissioner v. Harlan*, 80 Fed. (2d) 660, held immune the pay of an attorney of the Golden Gate Bridge & Highway District of San Francisco. Thus the question might be regarded as fairly well closed for this Board. But the Government says that for one reason or another each of those decisions lacks authoritative force to control the general question. It now presents these cases as complete both in facts and argument to serve as a definitive test. The evidence has been stipulated at length and also given in the testimony of Port Authority employees.

The Port Authority is organized for and operating in the traditionally sovereign function of protecting, improving, and developing the Port of New York; and all its activities are directed to and are incident to that end. The dual nature of our government requires that the state and Federal governments shall be adjusted to each other to produce the greatest power for each with the least friction. The problem is not one of logical or legal absolutes, but of the promotion of a smooth practical interrelation of the two in recognition of their several sovereign necessities. Neither may so exercise its powers as to encroach upon the necessary or traditional sovereign functions of the other; and, since this doctrine is firmly established, it is not to be supposed that either is attempting to do so. The revenue act and its broad definition of income may not be regarded as an attempt to tax the salary of the state executive although

74 it may be literally within its terms. The Attorney General expressed this opinion in 1919, 31 Op. A. G. 441. The immunity of such salary from Federal tax is inherent in the sovereignty of the state. If it inures to the benefit of the individual, this is but collateral to the effect upon the state. To him, it is not a matter of independent personal right, but of prerequisite of his office.

We are bound, when the Circuit Court of Appeals has held, in affirmance of our own earlier decisions, that the Port Authority and other organizations similarly engaged are performing a traditionally sovereign function, to apply the doctrine and hold the pay of its employees to be exempt from Federal tax. *Commissioner v. Ten Eyck*, *supra*; *Leon Moisseiff*, *supra*; *Robert Carey*, *supra*; *Commissioner v. Harlan*, *supra*. That the Ten Eyck case is regarded by the court as a holding that port development is a traditionally sovereign function is fortified by its more recent opinion in *Brush v. Commissioner*, — Fed. (2d) — (C. C. A., 2d Cir., July 13, 1936).

The argument is pressed that the immunity is lost when the activity of the state is one involving interstate commerce or navigation or is carried on under an interstate compact requiring Congressional consent. The argument is not new. It was considered and rejected in *Commissioner v. Harlan*, *supra*, and there is enough in the opinion and briefs in the Ten Eyck case to show that the Federal power over interstate commerce and navigation were not

overlooked. But to deal with the issue squarely, we are of opinion that the development of the port may not be interfered with by

75 Federal tax even though the interstate and foreign commerce passing through the port and upon its highways, bridges, and tunnels is subject to Federal regulation, even though the navigable waters under its bridges and over its tunnels are under Federal control, and even though the underlying interstate compact required the consent of Congress. To this may be added that there is no reason to regard the revenue act as a means used by Congress to regulate interstate commerce, to control navigation, or as an implied condition of its consent to the interstate compact. Cf. *United States v. Butler*, 297 U. S. 1. Such a view, if accepted, might go so far, for example, as to subject the employees of a state highway department or public service commission to Federal tax under the present law. It would mean that in making an interstate compact the states would be surrendering the very sovereignty which the Constitution takes for granted and upon which the compact is founded—and this, not directly by an express condition in the resolution of consent, but by an implied relation between the general terms of the consent and the broad terms of the revenue act. Is it to be supposed that in the blanket consent to interstate compacts for crime prevention (U. S. C. A., title 18, § 420) lurks a power to tax the state police officers who are employed under the compact?

Relying upon *Commissioner v. Powers*, 68 Fed. (2d) 634, the argument is made that the Port Authority is engaged in proprietary functions for profit with the effect of withdrawing sources of revenue from the Federal taxing power. This is said in respect of the rents from the Inland Terminal Building, more particularly the upper 76 per stories privately occupied; of the tolls from the bridges and tunnels; and of the destruction of private ferry competition. If these were independent profit-making ends in themselves, the argument would be more engaging. But these several operations, even though the revenues produced are substantial, are but incidental to the great and comprehensive sovereign project of improving the port and terminal facilities of the port district. *Bush Terminal Co. v. City of New York*, 152 N. Y. Misc. 144. The Inland Terminal Building was not constructed to produce rent as a profit on investment, but to provide a more efficient terminal and thus expedite traffic and relieve highway congestion. The bridge and tunnel tolls and the reduction of traffic on the private ferries were incidental to the governmental project of providing highways to facilitate traffic and reduce port and harbor congestion in the common public interest. It has not heretofore been suggested that the maintenance of a free state highway was a proprietary function subject to Federal tax because it diminished or destroyed the traffic on an existing private toll road. State public school teachers are not regarded as taxable because a new public school may reduce the taxable profits of an existing private school. The essential question of the preservation

of the state's sovereign powers in the interplay of our dual government may not be lost sight of by a pursuit of each detail of the method of exercising it as if it stood alone with a different history and a different purpose. *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393; *University v. People*, 99 U. S. 309; G. C. M. 13745, XIII-2 C. B. 76. Cf. *Trinidad v. Sagrada Orden de Predicadores*, 77 263 U. S. 578. It may be doubted whether the Port Authority has any right to engage in business for the sole or primary purpose of making profit; but not until it does so will the effect upon its tax immunity require consideration.

We hold that the Port Authority is engaged in the performance of a sovereign function of each of the states of New York and New Jersey and that the compensation received by its employees is exempt from the Federal income tax. This is primarily because of the constitutional right of the state to be free from Federal interference in the exercise of its sovereign powers. We hold further that even if the Port Authority's functions are not constitutionally immune from interference by Federal taxation, the power of the Federal Government to regulate commerce and control navigable waters has not been exercised by Congress through the imposition of tax in the general provisions of the revenue act, nor has such tax been provided for as an implied condition of consent to the interstate compact.

Reviewed by the Board.

Judgment will be entered for the petitioners.

MELLOTT dissents.

78 Before United States Board of Tax Appeals, Washington

Docket No. 77375

PHILIP L. GERHARDT, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Judgment

In accordance with the Board's report, promulgated October 28, 1936, it is

Ordered, adjudged, and decided that there is no deficiency in income tax for 1933.

Enter:

(Signed) JOHN M. STERNHAGEN, *Member.*

(Entered Oct. 31, 1936.)

79 Before United States Board of Tax Appeals, Washington

Docket No. 77377

BILLINGS WILSON, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Judgment

In accordance with the Board's report, promulgated October 28, 1936, it is

Ordered, adjudged, and decided that there is no deficiency in income tax for 1933, and no penalty.

Enter:

(Signed) JOHN M. STERNHAGEN, *Member*.

(Entered Oct. 31, 1936.)

80 Before United States Board of Tax Appeals, Washington

Docket No. 80769

JOHN J. MULCAHY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Judgment

In accordance with the Board's report, promulgated October 28, 1936, it is

Ordered, adjudged, and decided that there is no deficiency in income tax for 1932, and no penalty.

Enter:

(Signed) JOHN M. STERNHAGEN, *Member*.

(Entered Oct. 31, 1936.)

81 Before United States Board of Tax Appeals

Docket No. 75816

Docket No. 77375

Docket No. 77376

Docket No. 77377

Docket No. 80769

82

[Titles omitted.]

Motion to amend findings of fact and for specific findings of fact

Now comes the respondent, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, and moves that the Board amend and correct its findings of fact promulgated herein on October 28, 1936, in accordance with the facts of record, and that the Board make specific findings of fact as set forth below; and in support of said motion shows:

1. That the parties, for the purpose of presenting test cases which would be determinative of the tax liability for all employees of the Port of New York Authority, submitted these cases in part upon a Stipulation of Facts, in which were set forth certain of the facts as to the creation, operation, maintenance, and sources of revenue of the Port Authority.

Notwithstanding the importance and relevance of the facts contained in said Stipulation to the issues herein, the Board has omitted and failed to make findings of numerous facts set forth in detail in said Stipulation of Facts, upon which the parties relied as pertinent to, if not controlling of, said issues. Certain of said facts are set forth below as a part of the respondent's motion with the request that the Board make specific findings of fact in accordance therewith.

2. That said Stipulation of Facts did not and was not intended by the parties to contain all of the material facts, and many relevant and material facts upon which the parties particularly relied were contained in the eighteen exhibits to said Stipulation, but which facts were too extensive and voluminous to set forth in full in said Stipulation of Facts. Included as a part of said exhibits were The Legislative Reports, The Commission Reports, The Port Authority Statutes, The Compact, and the Comprehensive Plan, all of which contained vital and controlling facts as to the conception, organization, powers, duties, and legal functions of the Port Authority. Included as a part of said eighteen exhibits were the Annual Reports of the Port Authority covering its work, its function, and its methods of operation and maintenance throughout its entire history.

Notwithstanding the importance and relevance of all said documents to the issues herein, the Board has almost completely ignored the facts contained therein; and has failed to make findings as to facts therein contained which are pertinent and germane to the issues herein, if not controlling of said issues. Certain of the facts which the Board has thus failed to find and upon which respondent relies as determinative of the issues herein are set forth below as a part of this motion, with the request that the Board make specific findings of fact in accordance therewith.

3. That the parties for the same reason above set forth, introduced voluminous testimony of witnesses as to the design, purposes, construction and actual operation of certain facilities of the Port Authority, more particularly as to the Commerce Building and In-

land Terminal No. 1. Included as a part of said testimony were numerous stipulations of counsel as to facts formerly controverted, which facts are relevant and material to the issues herein. Certain concessions of facts were made by counsel for the taxpayers, in particular as to the competition of the various facilities of the Port Authority with the Ferry, Terminal, and Transportation Companies, their former profitable operation and the large extent to which their revenues were reduced by competition with the Port Authorities facilities, and the extent to which such competition had effected the withdrawal of revenues from Federal taxation.

Notwithstanding the importance and relevance of said testimony and said stipulations and concessions of counsel to the issues herein, the Board has almost wholly ignored said testimony, stipulations, and concessions of counsel, and has failed to make adequate findings of fact in regard thereto. Certain of the facts which the Board has thus failed to find and upon which respondent relies as determinative of the issues herein are set forth below as a part of the respondent's motion, with the request that the Board make specific findings of fact in accordance therewith.

85 4. That the Board in its findings of fact has omitted numerous facts as to the original reasons for and purposes of the Commerce Building as shown by the evidence (Annual Report, 1925, p. 18, 24); as to its location (Ex. N); as to objections to its erection and location (Ex. N); as to the failure of the Port Authority to procure the consent of the City of New York to its erection (Ex. N); as to its liability to the City of New York for the payment of municipal taxes thereon, and as to its efforts to compromise said tax liability by payment of an annual stated sum in lieu thereof (Tr. 384); as to the relation of the Port Authority to the several carriers leasing space in the Commerce Building (Ex. P); as to the terms and conditions under which Inland Terminal No. 1 was leased to the eight carriers (Ex. P); as to the relative amount of space and relative revenues produced by the Inland Terminal as compared to the remainder of the Commerce Building (Annual Report, 1930, p. 44; Tr. 287-290, 335); as to the competition admittedly furnished by the Commerce Building to like structures in the neighborhood (Ex. N, p. 39); and as to other facts in connection with the operation of said Commerce Building, its method of rental, its method of advertising, etc., all of which facts are relevant to the issues herein.

Notwithstanding the importance and relevance of said testimony and other facts of record, the Board has failed to make adequate findings of fact in regard thereto. Certain of the facts which the

86 Board has thus failed to find and upon which respondent relies as determinative of the issues herein are set forth below as a part of respondent's motion, with the request that the Board make specific findings of fact in connection therewith.

5. That the Board's findings of fact as to the authority for construction and operation of the several bridges and tunnels of the Port Authority are wholly inadequate and insufficient in that it has

failed to find as a fact that the authority of the legislatures of the States of New York and New Jersey were legally insufficient to permit the Port Authority to erect and operate said interstate bridges and tunnels, and in failing to find as a fact that before the Port Authority could erect any of the bridges and tunnels which it now operates over interstate navigable waters, it was necessary for the Port Authority (or in the case of the Holland Tunnel, its predecessor) to procure the consent of the Congress of the United States to the erection and operation of said interstate bridges and tunnels, and that the Port Authority did, in fact, procure the consent of Congress to the construction and operation of said interstate bridges and tunnels, showing the conditions and limitations upon said consent of the Congress. The facts which the Board has thus failed to find and upon which respondent relies as determinative of the issues herein are set forth below as a part of respondent's motion with the request that the Board make specific findings of fact in accordance therewith.

6. That the Board in its findings of fact on pages 8, 10, 11 87. and 12 has made numerous and extensive findings as to the congestion of streets and highways in and around the City of New York, as to traffic inconveniences and dangers in said area, as to freight congestion and transportation conditions therein, as to commutation and passenger traffic conditions in and around the City of New York, as to living costs in and around the city, as to competition of the Port of New York with other ports, and in general as to the necessity of the Port Authority engaging in the remedying of the above conditions. All of said findings of fact are utterly irrelevant and immaterial to the issues herein. The ultimate issue is not what constitutes the public functions of the states based upon public convenience or necessity, but what are the sovereign or governmental functions of the states which are protected by constitutional immunity. The Board's findings should be amended accordingly.

And respondent further moves that the Board make specific findings of fact relevant and material to the issues herein in substance as follows:

1. The report of the Joint Commission of New York and New Jersey rendered in 1919 and known herein as the "Joint Report with Comprehensive Plan and Recommendations," contained a summary of the purposes and problems of the two states in creating the Port of New York Authority, and of the physical needs and objectives of the two states. That report stated in part:

88 "A complete reorganization of the railroad terminal system is the most fundamental physical need of the Port of New York. * * * The plan recommended calls for improving and opening up for joint use the existing belt line links in New Jersey and constructing other belt lines along navigable New Jersey waters and further inland; building similar marginal railroads along navigable waters adjacent to Brooklyn, Queens, Staten Island,

and the Bronx, and utilizing with them the Long Island Railroad and New York Connecting Railroad to form a belt line system in New York; connecting the New Jersey and New York belt systems at first by a car ferry and ultimately by tunnel under the upper bay; operating all of these lines jointly, and operating jointly through new joint railhead terminals all railroad marine service not replaced by other service; and building an underground railroad system carrying special electrically operated cars connecting with all the railroads of the Port, serving virtually all of Manhattan and enabling the railroads to discontinue the pier stations and release the waterfront to other uses.

"This remodeled terminal railroad system bringing every railroad of the port to every part of the port * * *, constitutes the comprehensive plan which the Commission recommends for formal adoption by the two states" (Ex. B, pp. 2 and 3).

2. The compact of April 30, 1921, provided for the organization of the Port Authority and conferred on it certain jurisdiction and powers, but provided that such powers should not be exercised until the legislatures of the two states approved of a comprehensive plan for the Port. The comprehensive plan was adopted by the two legislatures on February 24, 1922, and was the same comprehensive plan which was recommended by the Joint Commission for formal adoption by the two states (Ex. F).

3. The compact contains certain recitals to the effect that the objects sought are "A better coordination of the terminal, transportation and other facilities of commerce in, about and through the Port of New York." The compact then confers upon the Port Authority certain "Powers and Jurisdiction" therein enumerated as follows:

"To purchase, contract, lease and/or operate any terminal or transportation facility within said district and to make charges for the use thereof; and for any of such purposes to own, hold, lease and/or operate real or personal property, to borrow money and secure same by bonds or by mortgages upon any property held or to be held by it." (Art. VI.)

And such additional powers as may hereafter be delegated to it by the legislatures of the two states (Art. VII).

The compact also sets forth certain specific restrictions and limitations upon the Port Authority as follows:

(a) The Port Authority shall have no power to pledge the credit of either state (Art. VII).

90 (b) The Port Authority shall have no power to take any property owned by either state or by any county, city or other subdivision of either state without the consent of such state or subdivision (Art. VI).

(c) All facilities of the Port Authority are expressly subject to the jurisdiction and control of the Public Utilities Commission of both states to the same extent as a private corporation (VIII).

(d) The Port Authority has no authority or control over the right of any municipality in the Port District to develop its own port and terminal facilities (Art. IX).

(e) The plans and projects of the Port Authority must be duly approved by the legislatures of both states before they become effective or binding (Art. XI).

(f) The right to veto any action of the Port Authority is expressly reserved to the legislatures and governors of both states (Art. XVI).

(g) The Port Authority is prohibited from incurring any obligation or expense prior to the appropriations made therefor by the legislatures of both states (Art. XVII).

(h) Rules and regulations for conduct of navigation made by the Port Authority must be approved by the legislatures of both states before they become binding and effective (Art. XVIII).

91 (i) The Port Authority has no power to provide or impose penalties for violations of its rules and regulations, such power being reserved to the legislatures of the two states (Art. XIX).

4. The Comprehensive Plan provides under Section 8 in part as follows:

"Sec. 8. The Port of New York Authority is hereby authorized and directed to proceed with the development of the Port of New York in accordance with said Comprehensive Plan as rapidly as may be economically practicable and is hereby vested with all necessary and appropriate powers not inconsistent with the constitution of the United States or of either State to effectuate the same, except the power to levy taxes or assessments."

5. From an examination of the text of the comprehensive plan and from the "Outline Summary Map of the Comprehensive Plan" attached to the Joint Report, Exhibit B, Map 1, it is apparent that it contemplated primarily the coordination of already existing railroad and terminal facilities and was limited to the construction and operation of certain tunnels, bridges, and belt lines in connection with such facilities. An analysis of the provisions of the comprehensive plan discloses that the projects embraced in it were as follows:

92 (a) A railroad tunnel or tunnels connecting the transcontinental railroad lines terminating in New Jersey, with the Long Island Railroad, the New York-Connecting Railroad and the New York Central and New York, New Haven and Hartford Railroads in Brooklyn and the Bronx (1924 Report, p. 46).

(b) A bridge or tunnel across the Arthur Kill River to connect New Jersey and Staten Island.

(c) A bridge or tunnel from New Jersey to Manhattan to accommodate the automatic electric underground system connecting the railroads in New Jersey with the railroads on Manhattan and providing for the bringing of standard railroad cars into Manhattan.

(d) Certain railroad belt lines specifically enumerated therein, and union terminal stations in connection with the automatic electric system (Comprehensive Plan, Ex. E, pp. 36, 37, and 42).

6. It is further apparent that the Comprehensive Plan contemplated that the objectives sought therein might be accomplished either by inducing and compelling the transportation and terminal companies to undertake such projects themselves, or by the Port Authority undertaking said projects by the purchase or lease of existing facilities and by constructing and operating additional ones. This is clear from the recitals in the Compact, and from the manner in which the "principles to govern the development" as set forth in the Comprehensive Plan are made to apply equally to the railroad and terminal companies undertaking such projects. This is also the plain interpretation placed upon the Comprehensive Plan by the Port Authority itself in its annual reports to the legislatures as to its activities and functions. See 1924 Report, pages 6, 7, and 8.

7. An examination of the Annual Reports of the Port Authority for the first three years discloses that its activities were almost exclusively in connection with railroad and terminal facilities, and followed some three related lines:

1. Efforts to compel the four railroads concerned to link up and operate as a joint facility, Belt Line No. 13, which the Port Authority repeatedly designated as "the most important item in the Port Authority Commission's work," and as "the first step in the effectuation of the Comprehensive Plan." 1923 Report, page 10; 1924 Report, page 11; 1922 Report, page 11.

2. Efforts to connect existing links and to commence construction of new sections comprising Belt Line No. 1 which the Port Authority termed "The keystone of the arch of the Comprehensive Plan." 1923 Report, page 16; 1924 Report, page 13.

3. Field studies of railroad pier station operations, terminal operations, store door deliveries and collections, marginal railroad lines, methods of lighterage and car float operations, and traffic studies of freight movement across the Hudson River, which studies "constituted essential information needed in determining the 'Economic Proof' related to Belt Lines Nos. 1 and 13 and their relation to the tunnel under the upper bay from Greenville to Bay Ridge and the Middle Belt Line No. 1 in New York." 1922 Report, pages 8, 9, and 10; 1923 Report, page 7.

8. During the year 1930 by joint legislation of the two states, the New York, New Jersey Interstate Bridge and Tunnel Commission was merged with the Port Authority, and the Port Authority was vested with the control, operation, and maintenance of the Holland running under the Hudson River from the New Jersey Shore to Manhattan. This tunnel was financed on the part of the State of New Jersey by a bond issue and on the part of the State of New York by direct appropriation.

By joint legislation of the two states in 1931 the foregoing legislation was abrogated, and it was enacted that the construction, operation, and maintenance of such bridges and tunnels across the Hudson River should be placed under the Port Authority 'to the

end that the tolls and revenues therefrom shall be applied to the cost of construction, maintenance, and operation of said bridges and tunnels as a group," but that said control, operation, tolls, and other revenues of the Holland Tunnel should vest in the Port Authority only upon the payment to each of the two states of the sums contributed by each to its construction with interest thereon (Ex. E, pp. 290, 294).

95 The tolls and revenues of the Holland Tunnel were pledged to secure the repayment of such advances by the states and the bonds or other obligations incurred thereon (Ex. E, p. 296).

9. A complete summary and statement of the nature of the activities of the Port Authority from its organization up to 1927 is found in the Annual Report for 1926, pages 5 to 9. This summary gives the interpretation placed upon its own functions by the Port Authority and makes it perfectly clear that the Port Authority regarded its functions as divided into two categories, viz.:

1. "Development and Protection of the Port under the Comprehensive Plan."

2. Construction and operation of interstate bridges.

The Annual Report for 1926 not only so states but the report itself is divided into those two categories, part one being headed "Development and Protection of the Port under the Comprehensive Plan" and part two being headed "Relating to Bridges" (pp. 13 and 47).

Moreover, it is clear that none of these bridges were contemplated by or related to the original Comprehensive Plan. In its report for 1926 the Port Authority does not mention the Comprehensive Plan in relation to these bridges, and there is no reference whatever to the Comprehensive Plan in part two of this Annual Report which
96 deals with the bridges. On the contrary, the first sentence of part two makes it plain that these bridges were a separate and distinct undertaking, for its states:

"By the direction of the legislature of the two states the Port Authority is engaged in four bridge enterprises."

This statement clearly refers to the four separate enabling acts above set forth, and the four bridges are named immediately thereafter, to-wit: two bridges over the Arthur Kill River; the Hudson River Bridge; and the Kill Van Kull Bridge (p. 47).

It is equally clear that this division by the Port Authority of its functions into these different categories was not inadvertent. Exactly the same division is made by the Port Authority in its Annual Report for 1927 (pp. 13 and 43). Moreover, under Section 1, of these two annual reports designated "Development of the Port, etc," no reference whatever is made to any of the "Interstate Bridges."

A third category or division was added to the activities of the Port Authority in the 1927 Report entitled "Suburban Transit" (p. 53). This category was added pursuant to Chapter 277, Laws of New Jersey for 1927 (Ex. E, p. 201), which directed the Port Authority to make a study and report to the legislature on the transit facilities

of the Port. According to the Port Authority's own report this is the first time that the Port Authority took any active interest in the transportation of passengers or transit facilities in the Port District.

These same divisions of the Port Authority's activities were again made in the Annual Report for 1928 (pp. 13, 35, 45, 59). Almost identical divisions of its activities are made by the Port Authority in all of its succeeding Annual Reports up to and including 1933.

10. From the several annual reports of the Port Authority from 1922 to 1928 it is clear that under Section 1, "Development and Protection of the Port under the Comprehensive Plan," the Port Authority had two classes of work, viz:

1. Development—Limited largely to belt lines and railroad terminals and studies for Union Inland Terminals in connection therewith (1928 Report, pp. 13 to 23).

2. Protection of the Port—Limited to interventions and appearances in proceedings before the Interstate Commerce Commission and other regulatory bodies in which the Port was concerned (1928 Report, pp. 25 to 34).

11. During the years in question the work of the Port Authority was confined to the following:

BRIDGES AND TUNNELS

(1) Operation of the Arthur Kill Bridges, known as Goethal's Bridge and Outerbridge Crossing. These bridges were completed in 1928 at a cost in excess of \$17,000,000.00. They are interstate vehicular bridges, one between Perth Amboy, New Jersey, and Staten Island, and the other between Elizabeth, New Jersey, and Staten Island. From the commencement of operation up through the years in question the joint financial operations of these two bridges resulted as follows:

| | |
|-----------------|----------------|
| 1928—Profit | \$272, 676. 75 |
| 1929—Loss | 33, 340. 21 |
| 1930—Profit | 76, 683. 54 |
| 1931—Profit | 40, 673. 37 |
| 1932—Loss | 187, 272. 17 |
| 1933—Loss | 295, 534. 46 |
| (Stip., p. 41). | |

The losses during 1932 and 1933 were due, according to the Port Authority's Annual Reports, in part to "General business depression seriously affecting the gross revenues" but "The larger portion of this decrease" was "due primarily to a further reduction in toll rates on the competing Perth Amboy Ferry" (1932 Report, pp. 51, 52; 1933 Report, p. 51. See also 1930 Report, p. 54).

These bridges were operated in direct competition with the Perth Amboy Ferry. The opening of the bridges forced the Perth Amboy Ferry to reduce its toll charges, and in 1932 the opening of the Outerbridge Crossing forced "a further reduction in toll rates on the competing Perth Amboy Ferry" (1932 Report, pp. 51, 52).

The other ferries, the Tottenville and Elizabeth ferries were both forced to "curtail services during the past year and will probably be less of a competitive factor next year" (1929 Report, p. 46).

99 Another ferry running between Carteret, New Jersey, and Staten Island has gone out of business since these bridges were opened (Annual Report, 1929, p. 46).

(2) Completion of construction and continued operation of the Kill Van Kull (Bayonne Bridge). This bridge was completed in 1931 at a cost of \$13,000,000.00. It is an interstate vehicular bridge between Bayonne, New Jersey, and Staten Island, New York. During the years in question the operation of this bridge resulted as follows:

| | |
|-----------------|-------------|
| 1931—Profit | \$25,400.29 |
| 1932—Loss | 101,466.11 |
| 1933—Loss | 240,890.18 |
| (Stip., p. 55.) | |

The losses in 1932 and 1933 were attributed by the Port Authority in its Annual Report for 1933, page 50, to: "the general depression has continued to be responsible for the decline in passenger car traffic primarily on Sundays and holidays" (see 1931 Report, p. 12).

This bridge was operated in direct competition with privately owned ferries across the Kill Van Kull and resulted in compelling the ferry companies to reduce their toll charges (Annual Report, 1932, p. 48; 1931 Report, p. 12).

(3) Completion of construction and continued operation of George Washington Bridge.—This bridge was completed in 1931 at a cost of \$57,000,000.00. It is an interstate vehicular bridge across the

100 Hudson River from Fort Lee, New Jersey, to Manhattan.

During the years in question the operation of this bridge resulted as follows:

| | |
|-------------|--------------|
| 1931—Profit | \$504,264.08 |
| 1932—Profit | 1,473,363.61 |
| 1933—Profit | 1,142,770.42 |

This bridge was erected in full anticipation that it would compete with the privately owned ferries across the Hudson River (Annual Report, 1926, pp. 14 to 16; Tr. 351, 352). Studies and clockings were made by the Port Authority of the traffic over the ferries for the purpose of determining how much of their traffic the Port Authority could reasonably expect to take away (Annual Report, 1925, p. 14; Tr. 456).

It is conceded as a fact by petitioners that these ferries were private companies or subsidiaries of the railroad companies operating across the Hudson; that the facilities operated by the Port Authority are in competition with those ferries and have reduced their traffic and their earnings, and that the earnings of these ferry companies were subject to Federal taxation as private corporations (Tr. 368, 369, 364).

It is also conceded that the business of these ferry companies not only has diminished "as a result of the furnishing of facilities like the Holland Tunnel and George Washington Bridge but they will

probably continue to diminish" (Tr. 351). That the bridges and tunnels were built with this expectation and the bonds of the Port Authority were sold to the public upon the expectation of "an increased revenue that was expected to come from people who formerly used the ferries" (Tr. 27, 51).

It was admitted by the taxpayer, Billings Wilson, Assistant General Manager of the Port Authority, which had made studies of the traffic and revenues of these ferry companies for a number of years (Annual Report, 1926, p. 51; Tr. 434, 435) that these ferry companies were profitable undertakings and had earned their capital investments many times prior to the Port Authority coming into the field (Tr. 432).

It is further conceded that the furnishing of vehicular tunnels and bridges by the Port Authority "may ultimately result in the complete wiping out of the ferries" (Tr. 352).

The opening of the George Washington Bridge compelled the 125th Street Ferry and Dyckman Street Ferry to "reduce their toll charges approximately 30% on passenger vehicles in an effort to retain traffic" (1931 Report, p. 49).

It is further admitted by the Port Authority that the George Washington Bridge is also in competition with the railroad companies by diverting to bus lines using the bridge substantial numbers of the "commuters who formerly used the railroads" (Annual Report, 1933, pp. 47, 48).

It is further admitted by the Port Authority that it has taken steps to suppress competition with its facilities across the Hudson River by opposing the granting of franchises or permits to a private company to erect another bridge across the Hudson to serve Manhattan (Annual Report, 1933, p. 28).

(4) Operation of the Holland Tunnel—This tunnel was purchased and taken over from the Interstate Bridge and Tunnel Commission March 1, 1931, and has been since operated by the Port Authority as its own property (1931 Report, p. 57). It is an interstate vehicular tunnel running from Jersey City, New Jersey, to Manhattan under the Hudson River. During the years in question the operation of this tunnel resulted as follows:

| | |
|--|----------------|
| 1931—Net Profit (Annual Report, p. 74) | \$3,031,987.89 |
| 1932—Net Profit (Annual Report, p. 74) | \$2,605,076.98 |
| 1933—Net Profit (Annual Report, p. 76) | \$2,440,987.15 |

It is conceded by the taxpayers that the operation of the Holland Tunnel by the Port Authority is in direct competition with private ferry companies across the Hudson River and that it has compelled them to reduce their toll charges and reduce their revenues in the same manner and to the same extent as has the operation of the George Washington Bridge as above set forth (Tr. 364, 368, 369). (See Annual Report, 1930, p. 51.)

(5) Since 1931 the Port Authority has been engaged in the construction of an interstate vehicular tunnel to extend from Wee-

hawken, New Jersey, to Manhattan Island, New York, at 38th Street, to be known as the Midtown Hudson Tunnel. It is designed for the same general purposes as the other Hudson River facilities of the Port Authority and it is conceded that upon completion its operation will further reduce and diminish the traffic across the Hudson now served by the private ferry companies and that the operation of this and the other Port Authority facilities may ultimately result in the complete wiping out of such ferry companies (Tr. 352).

12. Tolls are charged by the Port Authority for the use of all of its transportation facilities by the public including pedestrians (Stip. 89; 1931 Report, p. 49).

For the admitted purpose of increasing and stimulating the use of its facilities by the public and admittedly to divert traffic which formerly used the ferries across the Hudson (Annual Report, 1926, p. 51) the Port Authority has advertised its various bridges and tunnels extensively in magazines, trade journals and local newspapers (Stip. 93; 1931 Report, p. 48; Ex. S; Tr. 189).

It has distributed maps, descriptive pamphlets and other advertising matter designed to divert traffic to its facilities; through various tourist agencies, chambers of commerce and commercial organizations. Numerous specimens of such advertising were filed in evidence at the hearing, together with two traffic promotion programs adopted by the Port Authority for 1933 and 1934 (Exs. A and S; Tr. 189). Prior to the opening and operation of the Port Authority facilities this traffic was served by ferry companies and railroads—private carriers subject to Federal income tax—which as a result of the competition of the Port Authority facilities, have suffered substantial losses of revenue (Tr. 364, 368, 369).

13. The great preponderance of the traffic over the Port Authority bridges and tunnels does not consist of trucks and commercial vehicles (1931 Report, p. 51). From 80 to 90 per cent of the vehicles using its facilities are passenger automobiles and vehicles. The following analysis of its traffic during the years in question as taken from the annual reports of the Port Authority shows the relative percentages of its traffic:

Analysis of traffic over Authority's facilities.¹

| | Holland Tunnel | | | G. W. Bridge | | | Arthur Kill Bridges | | | Bayonne Bridge | | |
|------------------|----------------|------|------|--------------|------|------|---------------------|------|------|----------------|------|------|
| | 1931 | 1932 | 1933 | 1931 | 1932 | 1933 | 1931 | 1932 | 1933 | 1931 | 1932 | 1933 |
| Automobiles..... | .80 | .79 | .79 | | .90 | .88 | .88 | .87 | .85 | | .81 | .78 |
| Busses..... | .03 | .03 | .03 | | .04 | .06 | (?) | (?) | (?) | | .07 | .07 |
| Trucks..... | .15 | .16 | .16 | | .04 | .04 | .10 | .11 | .13 | | .10 | .15 |

¹ Figures from 1932 Annual Report, pp. 79, 80; 1933 Annual Report, pp. 82, 83. George Washington and Bayonne Bridges opened late in 1931 so no figures shown. Bicycles, motorcycles, etc., totaling less than 2%, excluded.

² Less than 1%.

14. During the years in question the Port Authority has been engaged in completing the construction of and in operating the Commerce Building and Inland Terminal No. 1.

The Comprehensive Plan provided that certain universal inland terminals should be constructed in connection with an dto be served by the automatic electric system (Ex. E, p. 42). Construction of the automatic electric system was found too costly and impracticable and was abandoned by the Port Authority in 1924, as stated in its Annual Report for 1924, page 18. The Port Authority thereupon planned to construct such terminals served by motor trucks in lieu of the underground system (p. 18).

Studies were made of the nature and location of such inland stations. The number of floors above the street level, according to the official published report of the Port Authority, was determined by two factors: (a) the finding of streets which would "permit the maximum number of floors above the street" and (b) the capacity of the streets to serve the upper floors by vehicles (Annual Report, 1925, p. 18). This is wholly at variance with the testimony of the petitioner Wilson that the number of floors was fixed by the amount of additional revenues necessary to carry the investment (Tr. 402).

The building as constructed is fifteen stories in height and covers an entire block 800 feet long and 206 feet wide, and is generally known as the "Port Authority Commerce Building" (1933 Report, p. 61; Ex. Q). It has no physical connection with any railroad or other railroad facility. It is not on the waterfront nor is it served by any water transportation (Tr. 325; 1931 Report, p. 41). "This building houses Union Inland Station No. 1 * * * jointly operated by all the railroads entering the Port District" (1933 Report, p. 61). The Inland Terminal is not used by two other railroads which enter the Port District, viz, the West Shore Railroad, and the New York, Ontario and Western (Tr. 282).

The basement and a large portion of the first floor are leased to eight railroads for use as a freight transfer terminal for a period of five years with options in the railroads to renew for nine additional five-year periods. The rent reserved is 10¢ per ton of freight handled with a proviso that if the net income from the entire building above debt charges and amortization exceeds \$60,000.00 per annum the rental will be reduced to 5¢ per ton (Ex. P). The eight railroads actually use and occupy only the first floor. The basement is occupied by the Railway Express Agency.

The remainder of the first floor is leased by the Port Authority to a bank, a barber shop, a cafeteria, beauty shop, and post office (Tr. 286). The second floor was designed as an exhibit hall known as "Commerce Hall." It is leased to various private persons for exhibition purposes such as the Ford Exposition in 1933 (Tr. 285). The upper thirteen floors were constructed for manufacturing, warehouse, office space, and other industrial purposes (Tr. 324, 332; 1933 Report, p. 61).

The space in the Commerce Building is divided as follows:

| | Square feet |
|-----------------------------------|-------------|
| Office Space ----- | 152,940 |
| Manufacture and Loft Space ----- | 1,842,000 |
| Freight Terminal purposes ----- | 282,650 |
| Stores (1930 Report, p. 44) ----- | 112,200 |

The gross annual tonnage capacity of Inland Terminal No. 1 107 is 680,000 tons. The first year's operation resulted in a gross tonnage of 40,000 tons, and the second, year's operation was about 65,000 tons (Tr. 287).

15. It is admitted by the Port Authority that one of the main purposes of the Inland Terminal was to "dry up" or eliminate the railroad pier stations on Manhattan Island and that it was expected that eventually all of these pier stations would be dried up by the establishment of like terminals by the Port Authority (1933 Report, p. 24).

16. In order to attract tenants into the Commerce Building the Port Authority made a contract with Brown, Wheelock, Harris and Company to act as rental agent and handle the warehouse space in it (Tr. 332, 335). As such agent this company solicited tenants to come into the building (Tr. 291, 294). Certain tenants, notably the New York Planning Company and Wheel-Parts, Inc., formerly tenants in the Bush Terminal Building, were induced to move into the Commerce Building (Tr. 293-294). The United Cigar Stores Company, also a tenant of Bush Terminal Building, was contacted as a tenant but decided not to move into the building (Tr. 295). The Port Authority has made certain concessions in rentals in order to secure tenants for the building (Tr. 298-300). The Port Authority has admittedly "induced" tenants to move into the building by advertising its terminal facilities. It has also advertised the Commerce Building separately from any of its other facilities (Tr. 330).

108 The Commerce Building houses such tenants as F. W. Woolworth Company, Interstate Department Stores and like concerns carrying on a stock distribution and warehouse business (Tr. 301, 302). It houses the Malina Company, Regal Shoe Company, H. A. Caesar and Company and other concerns doing manufacturing and wholesaling (Tr. 302). It houses R. H. Macy and Company, Rand, McNally Company and other tenants doing a distributive and warehouse business (Annual Report, 1933, p. 62).

An extensive and active campaign was carried on in advertising the building in order to secure tenants (Ex. Q). The Port Authority has held itself out to the public and advertised that it was able to furnish every sort of facility needed by any kind of business enterprise. It has advertised the Commerce Building while "designed primarily for industrial purposes * * * nevertheless has all the advantages of the most up-to-date office building." (Ex. Q, P. A. Commerce Bldg., p. 1.) It is advertised as: "The most complete business structure in the Metropolitan District * * * Designed to provide

every business requirement under one roof. No other building in Manhattan offers such varied and flexible facilities for conducting every phase of a commercial or industrial enterprise" (Ex. Q—"A Complete Business Home," foreword).

It is clear from the advertisements in evidence that the Port Authority by such advertising was soliciting industrial and commercial enterprises of all kinds to become tenants in the Commerce Building and therefore was competing with private buildings offering
109 loft, manufacturing, warehouse and office space or any of them (See also Tr. 330). The Commerce Building is in direct competition with certain buildings known as the 4th Avenue Development on 4th Avenue from 23rd to 34th Streets (Tr. 310-311). It was anticipated and admitted by representatives of the Port Authority prior to erection of the Commerce Building that it would furnish "not unreasonable competition to like structures in the neighborhood" (Ex. N, p. 39). Its erection was opposed by the City of New York, by the Chelsea Citizens Association, and by numerous other civic associations interested in the Chelsea neighborhood upon the ground that it would furnish untaxed and therefore unfair competition to private interests (Ex. N, pp. 29, 33, 35, 37, 38, 46, 49).

17. The preponderance of the revenue from the Port Authority Building is produced from the upper floors used for commercial and industrial purposes. The Inland Terminal proper does not produce and never was designed to produce sufficient revenue to support the cost of the land and building on which it is located (Tr. 290).

The upper floors of the building provide in excess of 2,000,000 square feet of space for rent (1930 Report, p. 44) which at 60 cents per square foot, which is the minimum rate charged in the building (Tr. 335), produce an annual rental of over \$1,200,000.00. The maximum rental which could be derived from the Inland Terminal space in the building in 1934 when 65,000 gross tons of freight were handled at 10 cents per ton, would be \$6,500.00 (Tr. 287).

110 18. The compact provides that the Port Authority shall not acquire or operate any property within the jurisdiction of any municipality in the Port District without the consent of such municipality (Art. IX). It appears from Exhibit N, the Stenographic Report of the hearing on the location of the Commerce Building, that the City of New York acting through its official governing and financial agency, the Board of Estimate and Appraisal, opposed the location and erection of the building as it now stands (Ex. N, p. 30). There is nothing in the record to show that the consent of the City of New York ever was obtained to its construction.

There is nothing in the Compact or in the enabling acts authorizing construction of the Commerce Building and Inland Terminal No. 1 which exempts the Port Authority from municipal taxation upon said property by the City of New York.

It does appear that after the building was erected the Port Authority attempted to make a contract with the City of New York by which the Port Authority should pay an annual sum of approximately \$60,000.00 in lieu of the taxes theretofore paid on the properties which formerly occupied its site (Ch. 553, Acts of N. Y., 1931). This contract was the subject of the suit brought against the Port Authority by the Bush Terminal Company, et als., in the Supreme Court of New York State, in which the power of the Port Authority to erect the Commerce Building or to make a contract to pay
 111 a sum in lieu of taxes thereon was attacked. That suit is now pending upon appeal in the courts of New York State (Tr. 384).

19. In 1932 and long prior to the construction of Inland Terminal No. 1, the Erie Railroad established an inland terminal on Manhattan similar to the one contemplated by the Comprehensive Plan. This was served by motor trucks from terminals in New Jersey over the Erie's ferry system. In its 1923 Report, page 17, the Port Authority stated that "This system is reported to be working with satisfaction to the railroad and to their customers."

During 1927, the Pennsylvania Railroad opened two new inland freight terminals on Manhattan and the Lehigh Valley opened a third such station in the same year (1927 Report, p. 15). In that report the Port Authority states that three railroads were then serving Manhattan by motor truck from New Jersey terminals and that eight inland freight terminals were already in actual operation (1927 Report, p. 15).

20. Since March 1, 1931, the Port Authority has owned and operated with its own personnel a bus line from Elizabeth, New Jersey, to Port Richmond, Staten Island, New York, which is used by the general public and upon which a fare is charged. The Port Authority established its own operation in order "to keep the service alive and also with a view to keeping employed surplus employees who would otherwise be released." It was hoped to build up this bus
 112 service to the point where it would "prove attractive to private operators and then eventually return some revenues in the form of bridge tolls."

21. Taxpayers have placed in evidence a great deal of testimony dealing with the activities of the Port Authority in effectuating the Comprehensive Plan (Testimony of Wilson, Tr. 370 to 538). Taxpayer's brief under the caption "Harbor Development," page 38, devotes an entire section to this point and describes in great detail certain activities of the Port Authority such as the making of studies for the improvement of the harbor, cooperation with municipalities, state and Federal highway commissions, participation in rate cases, etc. The annual reports for the years in question show that the Port

Authority expended in effectuation of the Comprehensive Plan only the following sums:

Expenditures for effectuation of comprehensive plan, year ended December 31,

| <i>Project</i> | <i>Amount</i> |
|--|----------------|
| Belt Lines—General | \$2, 128. 33 |
| Belt Line No. 1 | 295. 73 |
| Belt Line No. 13—General | 4, 998. 07 |
| Channels, Bridges, and Anchorages | 13, 460. 14 |
| Consolidated Lighterage and Carfloatage Operations | 48. 24 |
| Food Distribution—Marketing Research Council | 1, 278. 03 |
| Food Receiving Terminals and Food Distribution | 9, 380. 23 |
| 113 General Development Port District | 73, 102. 04 |
| Hoboken Marine Terminal | 3, 663. 48 |
| I. C. C. and State Commission Cases | 21, 919. 76 |
| Inland Terminals and Movement of Freight by Motor Trucks | 899. 75 |
| Jersey City Marine Terminal | 20, 372. 84 |
| Suburban Transit | 33, 235. 83 |
| Terminal Operations—General | 7, 011. 76 |
| Traffic Rates and Regulations | 15, 394. 62 |
| Total | \$207, 188. 88 |
| (1931 Report, p. 89.) | |

Expenditures for effectuation of comprehensive plan, year ended December 31, 1932

| <i>Project</i> | <i>Amount</i> |
|--|----------------|
| Belt Lines—General | \$1, 630. 59 |
| Belt Line No. 1 | 22, 200. 68 |
| Belt Line No. 13—General | 1, 097. 68 |
| Channels, Bridges, and Anchorages | 15, 089. 73 |
| Food Distribution—Marketing Research Council | 1, 082. 36 |
| Food Receiving Terminals and Food Distribution | 708. 75 |
| Development Work—Port District | 93, 403. 06 |
| I. C. C. and State Commission Cases | 13, 287. 56 |
| 114 Inland Terminals and Movement of Freight by Motor Trucks | 8, 657. 62 |
| Jersey City Marine Terminal | 5, 500. 00 |
| Suburban Transit | 13, 470. 75 |
| Terminal Operations—General | 5, 644. 75 |
| Traffic Rates and Regulations | 7, 762. 49 |
| Brooklyn—New Jersey Ferry | 39. 35 |
| Total | \$189, 575. 35 |
| (1932 Report, p. 86.) | |

Expenditures for effectuation of comprehensive plan, year ended December 31, 1933

| <i>Project</i> | <i>Amount</i> |
|---|----------------|
| Belt Lines—General | \$682. 73 |
| Belt Line No. 1 | 1, 962. 02 |
| Belt Line No. 13—General | 1, 671. 66 |
| Channels, Bridges, and Anchorages | 7, 179. 47 |
| Consolidated Lighterage and Carfloatage Operations | 998. 45 |
| Food Receiving Terminals and Food Distribution | 908. 44 |
| Development Work—Port District | 74, 652. 85 |
| I. C. C. and State Commission Cases | 11, 574. 51 |
| 115 Inland Terminal and Movement of Freight by Motor Trucks | 24, 206. 27 |
| Suburban Transit | 1, 393. 32 |
| Terminal Operations—General | 4, 819. 56 |
| Traffic Rates and Regulations | 8, 561. 47 |
| Total | \$138, 610. 75 |
| (1935 Report, p. 84.) | |

So far as the record shows no part of the funds expended by the Port Authority as above shown during the years in question was used to pay any part of the compensation of these petitioners.

22. During the years in question the profits from the operation of the Port facilities were as follows:

| | 1931—(74) ¹ | 1932—(74) | 1933—(75) |
|----------------------------------|------------------------|----------------|----------------|
| Operating Revenue: (Tolls, etc.) | \$7,367,288.39 | \$6,197,799.49 | \$9,755,245.91 |
| Net income | \$3,902,325.63 | \$2,605,076.96 | \$3,112,953.78 |

¹ Figures in parenthesis indicate page in Annual Report where figures are found.

23. All of the operating revenues and tolls of the Port Authority derived from its various facilities are specifically pledged as security for the payment of its outstanding bonds and obligations, which pledge constitutes a lien upon such revenues and tolls (Ex. E, 116 pp. 49, 73, 296; 1931 Report, p. 57). The Port Authority has authority under the compact to mortgage its facilities and any other property now held or to be acquired by it if it so desires (Art. VI).

24. All of the facilities and properties operated by the Port Authority stand in its name and are owned by it (Stip. 40, 48, 54; 1931 Report, p. 57). Neither state has any legal title or claim to any of its properties. Neither state has any lien or claims upon any revenues of the Port Authority (Ex. E, p. 47 and other enabling acts).

There is no provision or saving clause in the compact, Comprehensive Plan, or any of the statutes of either state dealing with the Port Authority which provides for its final liquidation or dissolution or for the reversion of its properties and facilities to either or both of the two states.

When the bridges, tunnels, and other self-liquidating facilities of the Port Authority now existing are completely amortized in accordance with the provisions of the statutes authorizing them, said facilities having a present value equivalent to the original cost thereof of less depreciation, will constitute unencumbered assets of the Port Authority.

25. The powers and functions of the Port Authority are only such as are given to it by statutes of the two states. It is expressly prohibited from levying any taxes or assessments (Comprehensive Plan, Sec. 8). It cannot borrow money except upon its own credit, nor can it incur expenses in excess of or in advance of appropriations therefor (Compact, Art. XVII). It has no judicial powers, no judges or justices, no courts, no sheriffs or bailiffs to enforce any laws. All penalties for violation of its rules for its facilities must be enacted by the legislatures of the two states and must be enforced in the regularly established courts of the two states (Compact, Art. XIX). All transportation facilities of the Port Authority are expressly subject to regulation by the Public Service Commission of both states to the same extent "as if such facility were

owned, leased, operated, or constructed by a private corporation" (Compact, Art. VIII).

26. All of the bridges and tunnels owned and operated by the Port Authority are interstate in character, and hence all charges, rates, rentals, and tolls charged thereon are subject to the power of Congress over such commerce under the Constitution of the United States. The rules and regulations of the Port Authority as to its bridges and tunnels over navigable waters are made expressly subject to the power of Congress over such facilities (Compact, Art. XXII).

27. The operations and activities of the Port Authority during the years in question were predominately in connection with its own facilities. It has never undertaken any projects to develop the harbor proper or the channel of New York in any way. It has never dredged a channel and has no dredges or facilities to do so. It neither owns nor has it constructed or improved any piers, docks, wharves, slips, or pier terminals (Tr. 539, 540). It does not own or operate any tugs, barges, or marine equipment which could be used for the improvement or conduct of navigation (Tr. 544). It has established no harbor markings, buoys, lights, bells, or any other means for improving navigation (Tr. 543). It has issued no rules or regulations affecting navigation or commerce except in connection with lights on its own bridges (Tr. 541).

28. The facilities constructed and operated by the Port Authority were financed principally by bond issues. Approximately 90% of the funds were provided in that way. The financing afforded by the states was only a very small part, approximately 10%. It was not invested in the enterprise but merely advanced—loaned to it. It must be repaid to the states (Stip., Par. 76). The figures follow:

| | <i>States Loan</i> | <i>Bond Issue</i> |
|---|--------------------|-------------------|
| Arthur Kill Bridges (Stip., Par. 40)----- | \$4, 200, 000 | \$14, 000, 000 |
| George Washington Bridge (Stip., Par. 46)----- | 9, 800, 000 | 50, 000, 000 |
| Bayonne Bridge (Stip., Par. 53)----- | 4, 100, 000 | 12, 000, 000 |
| Holland Tunnel (1931 Annual Rep. 57); (1932 Annual Rep. 54)----- | None | 50, 000, 000 |
| Commerce Building Inland Terminal (1931 Annual Rep. 57); (1932 Annual Rep. 54)----- | None | 16, 000, 000 |
| Total----- | \$18, 100, 000 | \$142, 000, 000 |
| Add: Midtown Tunnel construction (Stip., Pars. 70, 75)----- | 400, 000 | 37, 500, 000 |
| Total----- | \$18, 500, 000 | \$179, 500, 000 |

119 Of the advances made settlement of New Jersey's advances of \$4,500,000.00 was made by the issue of \$2,500,000.00 bonds; thereby reducing the advances by states to \$14,000,000.00 and increasing the bond total to \$182,000,000.00.

At the end of 1935, the reserves aggregated in excess of \$1,496,015.00 reflecting an equity equal to 5/7ths of the advances (1933 Annual Report, p. 73).

The Port Authority has set up on its books reserves for Sinking Funds, Operating Reserves, and a General Reserve.

On all of the facilities owned and operated by the Port Authority depreciation is charged annually in an amount sufficient to maintain the valuation of said facilities, so that when said facilities are fully depreciated the reserves will be adequate to replace them.

29. In order validly to make the compact and the agreement designated as the "Comprehensive Plan" it was necessary for the states to procure the consent of Congress (U. S. Const., Art. I, sec. 8, par. 3).

In giving consent to the compact (Ex. E, p. 30), Congress specifically provided:

"That nothing therein contained shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of said agreement."

In giving consent to the Comprehensive Plan (Ex. E, p. 46),
120 an exactly similar proviso was incorporated, and in addition,
a further one as follows:

"Provided further, that no bridges, tunnels, or other structures shall be built across, under, or in any of the waters of the United States, and no change shall be made in the navigable capacity or condition of any such waters, until the plans therefor have been approved by the Chief of Engineers and the Secretary of War."

The original Comprehensive Plan provided for only one bridge. Specific consent was obtained from Congress for the erection of each bridge and the Holland Tunnel. The consents given for the erection of the bridges appear in Exhibit E, pages 96 to 99, inclusive. Those consents provided that the construction, operation, and maintenance of the bridges had to comply with the "Act to Regulate Construction of Bridges over Navigable Waters," approved March 23, 1906. The consent given by Congress for the construction of the Holland Tunnel appears in Exhibit H, pages 37 and 38, and specifically provides that the consent shall not be considered to affect the right of the United States to regulate interstate commerce or the jurisdiction of the United States over navigable waters.

In all the consents given, there was expressly and unconditionally reserved by Congress the power to alter, amend, or repeal the resolutions granting the consents.

121 Wher'fore, respondent prays that this motion be granted.

(Signed) HERMAN OLIPHANT,

Herman Oliphant,

General Counsel,

For the Department of The Treasury.

Of Counsel:

GEORGE D. BRABSON,

Special Attorney, Bureau of Internal Revenue.

Before United States Board of Tax Appeals

Docket No. 75816

Docket No. 77375

122

Docket No. 77376

Docket No. 77377

Docket No. 80769

[Titles omitted.]

Respondent's motion for reconsideration

Now comes the respondent, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, and moves that the Board reconsider its opinion and decision heretofore rendered herein, and that the Board vacate said opinion and decision, or modify the same to conform to the facts of record, and in support of said motion shows:

(1) That under date of November 20, 1936, the respondent
123 filed his motion herein to amend the findings of fact, setting forth wherein the Board's findings of fact were incomplete and inadequate and failed to find numerous facts which were pertinent and germane to the issues herein if not controlling thereof, and requesting the Board to make specific findings of fact as to numerous facts of record.

That upon the basis of said amended and specific findings of fact requested by respondent, the opinion and conclusions of the Board are clearly inconsistent and not in accordance with the facts stipulated by the parties or proved by competent testimony.

(2) That upon the basis of said amended and specific findings of fact requested by respondent the opinion of the Board and the conclusions reached therein are clearly erroneous both in fact and in law, and are inconsistent with the decisions of the Supreme Court of the United States in the cases of *Helvering v. Powers* (1935), 293 U. S. 214; *Flint v. Stone Tracy Company* (1908, 220 U. S. 107; *Trenton v. New Jersey* (1916), 262 U. S. 182; *California v. U. S.* (1936), 297 U. S. 1.

(3) That the findings of the Board in its opinion to the effect that "the Port Authority is organized for and operating in the sovereign function of protecting, improving, and developing the Port of New York, and all of its activities are directed to and are incident to that end" is a pure assumption without foundation in the facts of record, and based upon a wholly erroneous misconception of what
124 said functions consist of or in what sovereign power said functions are vested by the Constitution of the United States. The "sovereign function" of a state in connection with its ports and harbors does not consist in engaging in the building of bridges and tunnels as means of transportation for packaged freight for railroads and traffic facilities for commuters, but consists in the "tradi-

tional supervision exercised by governments over seaports." See *Brush v. Commissioner, U. S., C. C. A. Second, July 13, 1936*, which distinguishes the case of *Commissioner v. Ten Eyck, 76 Fed. (2d) 545*, expressly upon that ground. Moreover, even the sovereign function of supervision over seaports is committed by the Constitution to the Federal Government and not to the states. See *U. S. v. Chandler Dunbar Company (1912), 229 U. S. 53*.

(4) That the statement of the Board in its opinion that "the argument is pressed that the immunity is lost when the activity of the state is one involving interstate commerce or navigation" is a misapprehension of respondent's argument. Respondent made no such contention at the hearing or on brief. What respondent did contend was that the bridges and tunnels of the Port Authority are built and operated between two states and as such are instrumentalities of interstate commerce, and that they are operating across navigable waters; and, therefore, said instrumentalities are subject to power of Congress over those fields of commerce. *Covington Bridge Co. v. Kentucky (1893), 154 U. S. 218; Louisville Bridge Co. v. U. S. (1916), 242 U. S. 417*.

That the authority of Congress over those fields of commerce
125 is supreme and plenary, empowering Congress to license, regulate, and control the usage of such instrumentalities without judicial review by any Court. That the authority of Congress over those fields of commerce is exclusive and is not shared with any of the states. *U. S. v. Chandler Dunbar Company, supra*. Hence, the construction and operation of such instrumentalities which could only be undertaken with the consent of Congress cannot be held to be an exercise of the powers of another sovereign, to-wit, the State of New York or New Jersey. Hence, the exercise of those functions by the several states is purely permissive and is not sovereign nor governmental in any sense.

Wherefore, respondent prays that this motion be granted.

(Signed) HERMAN OLIPHANT,
*General Counsel for the
Department of the Treasury.*

Of Counsel:

GEORGE D. BRABSON,
Special Attorney, Bureau of Internal Revenue.

GDB-GA 11-25-36.

126

Before United States Board of Tax Appeals

Docket No. 75816

Docket No. 77375

Docket No. 77376

Docket No. 77377

Docket No. 80769

127

[Titles omitted.]

*Petitioner's motion in opposition to amendment of findings of fact,
including taxpayer's motion for additional findings of fact*

Now come the Petitioners by their attorney, Julius Henry Cohen, General Counsel of The Port of New York Authority, and move in opposition to and for the denial of the motion of the respondent filed November 20, 1936, which requests an amendment and correction of the Findings of Fact hereinbefore promulgated on October 28, 1936. In praying the denial of the respondent's motion, the petitioners show:

1. All of the present requests for findings had heretofore been presented to this Board by the respondent in his brief of March 20, 1936, and have been carefully and extensively reviewed by this Board in the Findings of Fact promulgated October 28, 1936, after review by the entire Board.

In his brief of March 20, 1936, the respondent incorporated thirty-six specific requests for findings of fact (Respondent's Brief, pp. 7 to 38, inclusive). The present document is a repetition in haec verba of twenty-nine of those same requests.

Twenty-six of these former requests reappear in the present motion in identical form, three appear in almost identical form, and seven of the former thirty-six requests have now been omitted.

For the convenience of the Board, the repetition of these paragraphs is tabularized as follows:

The following numbered requests appear both in the Respondent's Brief of March 20, 1936, and in the present motion, in haec verba:

| Present Motion | Respondent's Brief of March 20, 1936 |
|--------------------|---|
| Request No. 1 | Request No. 4 |
| " " 2 | " " 5 |
| " " 3 | " " 6 |
| " " 4 | " " 7 |
| " " 5 | " " 8 |
| " " 6 | " " 9 |
| " " 7 | " " 11 |
| " " 8 | " " 15 |
| " " 9 | " " 16 |
| " " 10 | " " 17 |
| " " 11 | " " 18 |
| " " 12 | " " 19 |
| " " 13 | " " 20 |
| " " 14 | " " 21 |
| " " 15 | " " 22 |
| " " 16 | " " 23 |
| " " 17 | " " 24 |
| " " 19 | " " 26 |
| " " 20 | " " 27 |
| " " 21 | " " 28 |
| 129 Request No. 22 | Request No. 29 |
| " " 23 | " " 30 |
| " " 25 | " " 32 |
| " " 26 | " " 33 |
| " " 27 | " " 34 |
| " " 29 | " " 36 |

The following numbered requests are identical except that to each has been added an additional paragraph:

Present Motion
Request No. 18
" " 24
" " 28

Respondent's Brief
of March 20, 1936
Request No. 25
" " 31
" " 35

The requests numbered 1, 2, 3, 10, 12, 13, and 14 in the brief of March 20, 1936 are not advanced by the respondent in the present motion.

Subsequent to the trial of this action, the petitioners also submitted and moved for one hundred eighty-five requested Findings. The Findings of Fact actually made by the Board in its decision of October 28, 1936 are complete and comprehensive. They occupy seventeen pages of the Board's report. The cases were under 130 consideration for a period of about eight months. The report was reviewed by the entire Board and was promulgated with the concurrence of fourteen Members and the dissent of one, though no opinion nor any disagreement with the specific Findings of Fact of the Board were submitted by the dissenting Member. The Findings of Fact so made by the Board constitute a most complete and exhaustive summary of the origin, nature and functions of The Port of New York Authority that has ever been written. It indicates, contrary to the implications now raised by the Bureau of Internal Revenue, that every word of the voluminous pleadings, stipulations of fact, briefs, testimony and exhibits which were submitted to the Board, was carefully read and was drawn upon by the Board in the task of formulating its Findings and its Opinion. Indeed, the care of the Board in the performance of this task, is evidenced by the fact that there are included in the Findings, facts not mentioned at the hearing nor in the briefs, but found by careful perusal of the volumes of exhibits that were introduced.

In the light of these facts, no further argument in opposition to the granting of the present motion is necessary.

Were it not for the obvious fact that the present motion is only made for the purpose of incorporating the Bureau's requests in a record on appeal, certain of the respondent's contentions might easily be regarded as insolent. For example, that the Board "omitted and failed to make findings of numerous * * * and pertinent 131 facts," and that the Board "almost completely ignored the facts contained" in "important and relevant documents," and that the Board ignored and refused to find facts which were "pertinent and germane to the issues herein, if not controlling of said issues," and that the Board "almost wholly ignored said testimony, stipulations and concessions of counsel," and that the Board refused to find as to certain facts which the Bureau contends would have been determinative, and that the Board made numerous findings which were "utterly irrelevant and immaterial to the issues." In a document worthy of record, such observations do not pay proper respect to the tribunal before which they are made.

We assume, however, that the motion is in reality but an effort to obtain inclusion of the Bureau's former requests to find in the record on appeal, since they were not in proper order as part of the Bureau's brief.

2. The fallacies in the Bureau's requests for findings, were pointed out in our Reply Brief, specifically on pages 4 to 8 thereof, under the heading "The Findings Requested by the Bureau." We need not repeat any of the arguments on the merits, in opposition to the granting of this motion—all of which have heretofore been submitted to, and considered by, this Board.

3. We here make reference to the few new requests in the present motion to amend the Findings of Fact. These are contained in the additional paragraphs added to the present Requests (Nos. 18, 24, and 28).

132 The error of this additional material is clear.

(a) Request No. 18 is identical with the respondent's former Request No. 25 (the error of which was pointed out in Petitioners' Reply Brief at p. 7), except that there has now been added:

"There is nothing in the Compact or in the enabling acts authorizing construction of the Commerce Building and Inland Terminal No. 1 which exempts the Port Authority from municipal taxation upon said property by the City of New York."

Such a request indicates clearly that the respondent either does not, or will not, even attempt to understand the law upon this question, as stated by the Supreme Court in *Bush Terminal Co., et al. v. City of New York*, et al., 152 N. Y. 144, and as expressed by the Legislatures of the two States in Chapter 553 of the Laws of New York, 1931 and Chapter 69 of the Laws of New Jersey, 1931.

However, we need only point out that the respondent stipulated that Inland Terminal No. 1 was exempt from municipal taxation! Stipulation of Facts, Paragraph 97 agrees that,

"97. By special statutes of the States of New York and New Jersey, it is provided that the Port Authority shall be exempt from state and municipal taxation with respect to all property of the Port Authority."

133 (b) Request No. 24 is identical with the respondent's former Request No. 31 (the error of which was pointed out in Petitioners' Reply Brief at p 8), except that there has now been added a paragraph to the effect that when the Port Authority bonds are paid off the facilities will become the unencumbered assets of the Port Authority.

This really adds no new proposition to the old Request No. 31, and has been completely answered on page 8 of our Reply Brief. These properties are clearly held by the Port Authority only as the agent and trustee of the two States, and, save for the lien of the bondholders, is subject to the uncontrolled disposition of the two sovereign States.

(c) Request No. 28 is identical with respondent's form Request No. 35 (the error of which was pointed out in Petitioners' Reply Brief at p. 8), except that there has now been added a paragraph that,

"The Port Authority has set up on its books reserves for Sinking Funds, Operating Reserves, and a General Reserve."

This was so stipulated (Stipulation, Paragraph 76 and Exhibit K), and was so found by the Board (Case v. Commissioner, 34 B. T. A. 187 at pp. 12 and 13).

134 4. We venture the suggestion that the Bureau's disappointment with the Findings is due to the inescapable logic of the reasoning which arises out of the Board's careful marshalling of the facts—the great governmental purpose underlying the plan of the two states, and the urgent governmental need which prompted it. The Board's analysis of the facts shows quite clearly that the few points on which the Bureau sought to rest its case—such as revenues from bridge tolls—do not accord with a sincere effort to "see the facts clearly and see them whole." The Bureau would, of course, have been better satisfied if the Board's findings had ignored the facts developed by the petitioners. These facts are contained in a separate motion, "Petitioners' Proposed Findings of Fact," duly filed on March 20, 1936, which are attached hereto and made a part of this reply. The Board has, in truth, already acted on the motion now made, because it was only after the most painstaking analysis of both sets of requested findings that the Board arrived at the Findings of Fact contained in its report. A report which gives a true picture of the Port authority, its history and its functions, should not be modified because of the disappointment of a litigant who merely repeats verbatim a request already made and adequately acted upon by this Board.

Wherefore, the Petitioners pray that the motion of the respondent, filed November 20, 1936, as aforesaid, be denied.

JULIUS HENRY COHEN,
Counsel for Petitioners.

Of Counsel:

WILBUR LAROE, Jr.
AUSTIN J. TOBIN.

135 Before United States Board of Tax Appeals

Docket No. 75816

Docket No. 77375

Docket No. 77376

Docket No. 77377

[Titles omitted.]

Notes on petitioners' proposed findings of fact

For the convenience of the Member, we have made parenthetical references after each finding to the sources for authorities in support thereof in the Stipulation, Transcript, and in the Port Authority's Trial Brief. Where the Brief is referred to, the reference will be understood to be directed to the facts and authorities therein cited, rather than to the Brief itself as an ultimate authority. Many of the findings are based directly upon facts agreed upon in the Stipulation. Where the language used is not identical with the language of the Stipulation, we have so indicated.

For the convenience of the Member, we also submit the following topical index of the paragraphs of the Proposed Findings:

| | Pars. |
|--|------------|
| The Petitioners are Employees of the Port Authority----- | 1-2 |
| The Employment of Montgomery B. Case----- | 3 to 10 |
| The Employment of E. Morgan Bartrdale----- | 11 to 19 |
| The Employment of Philip L. Gerhardt----- | 20 to 27 |
| The Employment of Billings Wilson----- | 28 to 34 |
| The Employment of John J. Mulcahy----- | 35 to 41 |
| Organization and Nature of Port Authority----- | 42 to 44 |
| The Port Problem----- | 45 to 61 |
| The Origins of the Port Authority----- | 62 to 71 |
| The Compact----- | 72 to 76 |
| The Comprehensive Plan----- | 77 to 81 |
| General Powers and Functions----- | 82 to 106 |
| Bridges and Tunnels----- | 107 to 152 |
| 137 Arthur Kill Bridges----- | 107 to 119 |
| George Washington Bridge----- | 120 to 126 |
| Bayonne Bridge----- | 127 to 132 |
| Holland Tunnel----- | 133 to 144 |
| Midtown Hudson Tunnel----- | 143 to 152 |
| Financing----- | 153 to 155 |
| Inland Terminal No. 1----- | 156 to 171 |
| General Development of Port and Harbor----- | 172 to 185 |

Before United States Board of Tax Appeals

Docket No. 80769

[Title omitted.]

Petitioners' proposed findings of fact

1. The five petitioners above named are individuals and citizens of the United States. The petitioner Montgomery B. Case is a resident of Englewood, County of Bergen, in the State of New Jersey. The Petitioner Philip L. Gerhardt is a resident of the County of Kings, City and State of New York. The petitioner E. Morgan Bartrdale is a resident of South Orange, County of Essex, in the State of New Jersey. The petitioner John J. Mulcahy is a resident of the County of New York, City and State of New York. The petitioner Billings Wilson is a resident of the County of Bronx, City and State of New York (Stip., No. 1).

2. Each of the five petitioners above named is an employee of The Port of New York Authority (Stip., No. 2).

3. Montgomery B. Case was employed by The Port of New York Authority pursuant to a resolution of the Commissioners of the Port Authority dated March 3, 1927, as Engineer of Construction at a salary of \$12,000 per year. Prior to the year 1931 Mr. Case's salary had been increased to \$16,000 per year. Said employment was to take effect and did take effect on April 1, 1927, and continued until Mr. Case left the employ of the Port Authority on December 31, 1932 (Stip., No. 99).

4. Upon entering the employ of the Port Authority Mr. Case took the following oath:

"I, Montgomery B. Case, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of Engineer of Construction of The Port of New York Authority according to the best of my ability" (Stip., No. 100).

5. It was understood that the petitioner was to be at the 139 offices of the Port Authority in New York City on each and every working day from 9 A. M., to 5 P. M. and from 9 A. M. to 12 Noon on Saturday, the normal working hours for all Port Authority employees, except, of course, on such occasions as his Port Authority duties might require his presence elsewhere. It was agreed that although generally the petitioner would be required to devote only the above mentioned hours to his Port Authority duties he would, whenever necessary devote such extra time to his duties as might be required without extra compensation (Stip., No. 101).

6. As Engineer of Construction Mr. Case was the executive head of the Construction Division of the Port Authority's Engineering Department and had direct charge of all construction forces working on the George Washington Bridge, Bayonne Bridge, Holland Tunnel and Midtown Hudson Tunnel during the year 1931. His duties were prescribed by the Chief Engineer of the Port Authority to whom Mr. Case was required to and did submit weekly reports, and from time to time he was required to make such further reports as the Chief Engineer required (Stip., No. 102).

7. In all of his duties Mr. Case was under the immediate and direct supervision of the Chief Engineer of the Port Authority and on occasions when Mr. Case differed with the Chief Engineer on matters involving construction or on other matters within the scope of his employment he was directed to proceed in accordance with the direction of the Chief Engineer (Stip., No. 103).

140. 8. Mr. Case was furnished with an office by the Port Authority in the Engineering Department of the Port Authority's general offices and he was supplied with all necessary supplies and materials by the Port Authority. His office force, engineering assistants, draftsmen, and stenographers were supplied by the Port Authority and were regular employees on the payroll of the Port Authority. Traveling expenses and all other expenses incurred by him in connection with the performance of his duties were paid by the Port Authority (Stip., No. 104).

9. During the year 1931 Mr. Case had no outside office and no outside business associations or connections of any kind whatsoever. During said year he did no engineering work other than that performed in his capacity of Engineer of Construction for the Port Authority and received no outside income except income or securities held or owned by him during that year (Stip., No. 105).

10. Mr. Case's name appeared on the payroll of the Port Authority and he was required to sign that payroll as were all employees of the Port Authority (Stip., No. 106).

11. E. Morgan Barradale was a member of the staff of the New York-New Jersey Interstate Bridge and Tunnel Commission from 1919, the date of its organization, down to the time of the merger of that Commission with The Port of New York Authority on May 8, 1930. He was continued as an employee and a member
141 of the staff of The Port of New York Authority from the date of the merger, with the title of Superintendent of Tunnel Operations, down to the present date. During the year 1933 Mr. Barradale received from the Port Authority in salary the sum of \$10,174.97 (Stip., No. 107).

12. As an employee of the New York-New Jersey Bridge and Tunnel Commission, Mr. Barradale had taken an oath of office (Stip., No. 108).

13. It was understood that the petitioner was to be at the administrative offices of the Holland Tunnel in New York City on each and every working day from 9 A. M. to 5 P. M. and from 9 A. M. to 12 Noon on Saturday, the normal working hours for all Port Authority employees except, of course, on such occasions as his Port Authority duties might require his presence elsewhere. It was agreed that although generally the petitioner would be required to devote only the above mentioned hours to his Port Authority duties he would, whenever necessary, devote such extra time to his duties as might be required without any extra compensation, and, as a matter of fact, because operations in the Holland Tunnel and other Port Authority facilities are twenty-four hour operations, it would be necessary for Mr. Barradale throughout his period of employment to devote a large amount of additional time to his work (Stip., No. 109).

14. As Superintendent of Tunnel Operations Mr. Barradale
142 is in charge of the operation and maintenance of the Holland Tunnel and had direct charge of all Port Authority employees engaged in tunnel operations during the year 1933. His duties were prescribed by the Assistant General Manager in Charge of Operations to whom Mr. Barradale was required to submit daily, weekly, monthly and annual reports, and from time to time he was required to make such further reports as the Assistant General Manager in Charge of Operations required (Stip., No. 110).

15. Furthermore, Mr. Barradale was required to and did submit a monthly time report showing the number of hours worked on each and every day during the month, the number of hours spent in connection with each of the several activities undertaken by him in the

course of his employment, and the number of hours worked each day over and above the seven standard hours (Stip., No. 111).

16. In all of his duties Mr. Barradale was under the immediate and direct supervision of the Assistant General Manager in Charge of Operations and on occasions when Mr. Barradale differed with the Assistant General Manager on matters within the scope of his duties he was directed to proceed in accordance with the direction of the Assistant General Manager (Stip., No. 112).

17. Mr. Barradale was furnished with an office by the Port Authority in the Administration Building of the Holland Tunnel in
143 New York City and was supplied with all necessary supplies and materials by the Port Authority. His office force, stenographers and other assistants were supplied by the Port Authority and were regular employees on the pay roll of the Port Authority. Traveling expenses and all other expenses incurred by him in connection with the performance of his duties were paid by the Port Authority (Stip., No. 113).

18. Mr. Barradale had no outside business connection during the year 1933 except for his office and position as Director and President of the South Orange Building and Loan Association. During the year 1933, Mr. Barradale received no outside income except fees from said South Orange Building and Loan Association and income derived from rents or interest on securities held or owned by him during that year (Stip., No. 114).

19. Mr. Barradale's name appeared on the payroll of the Port Authority and he was required to sign that payroll as were all employees of the Port Authority (Stip., No. 115).

20. Mr. Gerhardt was employed by the Port Authority pursuant to a resolution of the Commissioners of the Port Authority dated May 7, 1931, with the title of Industrial Consultant at a salary of \$8,500 a year. During the year 1933, however, Mr. Gerhardt received a salary of \$8,137.50 as a result of a salary reduction applicable to practically all Port Authority employees during that year. Mr. Gerhardt's employment was effective May 16, 1931, and has continued to the present date (Stip., No. 116).

144 21. On entering the Port Authority's employ Mr. Gerhardt took the following oath:

"I, Philip L. Gerhardt, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of Industrial Consultant of The Port of New York Authority according to the best of my ability" (Stip., No. 117).

22. It was understood that Mr. Gerhardt was to be at the office of the Port Authority in New York City on each and every working day from 9 A. M. to 5 P. M. and from 9 A. M. to 12 Noon on Saturday, the normal working hours of all Port Authority employees, except, of course, on such occasions as his Port Authority duties might require his presence elsewhere. It was agreed that although generally the petitioner would be required to devote only the above mentioned

hours to his Port Authority duties he would, whenever necessary, devote such extra time to his duties as might be required, with any extra compensation. As a matter of fact, Mr. Gerhardt's duties in connection with the operation of Inland Terminal No. 1 constantly required his presence at the office of the Port Authority at hours other than and in excess of the normal working hours for all Port Authority employees (Stip., No. 118).

23. As Industrial Consultant Mr. Gerhardt's duties as assigned for the year 1933 involved the design of the building from an operations standpoint and the general supervision of the operation and rental of Inland Terminal No. 1. His duties were prescribed by the General Manager of the Port Authority to whom Mr. Gerhardt was required to submit such reports on matters of operation and rental as the General Manager may, from time to time, require. In all of his duties Mr. Gerhardt was under the immediate and direct supervision of the General Manager of the Port Authority and on occasions when Mr. Gerhardt differed with the General Manager on matters involving operations or rental or on other matters within the scope of his employment, he was directed to proceed in accordance with the direction of the General Manager (Stip., No. 119).

24. Mr. Gerhardt was required to submit monthly time reports itemizing the number of hours worked in each day and describing the work performed, the number of hours spent in connection with each type of work, and the number of hours worked each day over and above the seven standard hours. These time reports were approved over the signature of the Real Estate Agent of the Port Authority, in whose general office Mr. Gerhardt's office is located (Stip., No. 120).

25. Mr. Gerhardt was furnished with an office by the Port Authority in the Port Authority's general offices and he was supplied with all necessary supplies and materials by the Port Authority. His office force, stenographers, and the personnel of his staff engaged in the management, operation, and rental of Inland Terminal No. 1, were supplied by the Port Authority and were regular employees on the payroll of the Port Authority. Travelling expenses and all other expenses incurred by him in connection with the performance of his duties were paid by the Port Authority (Stip., No. 121).

26. Mr. Gerhardt had no outside office and no outside business association or connection of any kind whatsoever during the year 1933. He received no outside income during the year 1933 except a small amount of bank interest (Stip., No. 122).

27. Mr. Gerhardt's name appeared on the payroll of the Port Authority and he was required to sign that payroll, as were all employees of the Port Authority (Stip., No. 123).

28. Mr. Wilson has been constantly employed by the Port Authority from July 1, 1922, to the present time. During the year 1933 he had the title of Assistant General Manager and received a salary of \$14,625 for that year (Tr., p. 371).

29. On entering the Port Authority's employ Mr. Wilson took an oath of office (Tr., p. 371).

30. It was understood that Mr. Wilson was to be at the office of the Port Authority in New York City on each and every working day from 9 A. M. to 5 P. M. and from 9 A. M. to 12 Noon on Saturdays, the normal working hours of all Port Authority employees, except, of course, on such occasions as his Port Authority duties might
147 require his presence elsewhere. He was required to devote so much extra time to his duties as might be required without any extra compensation. As a matter of fact, Mr. Wilson's duties in connection with the general operations of the Port Authority constantly require him to divide his duties between administrative work in the office and inspection and supervision work in the field, as the exigencies of operations in his charge demand (Tr., p. 372).

31. As Assistant General Manager in charge of operations, Mr. Wilson's duties as assigned for the year 1933, involved the general supervision of all of the operations of the Port Authority including the supervision, maintenance, operation, and repair of all bridges and tunnels. In all of his duties, Mr. Wilson was under the immediate and direct supervision of the General Manager of the Port Authority and on occasions when Mr. Wilson differed with the General Manager on matters that involved operation or other matters within the scope of his employment, he was directed to proceed in accordance with the direction of the General Manager (Tr., p. 526).

32. Mr. Wilson was furnished with an office by the Port Authority in the Port Authority's general offices. He was supplied with all necessary supplies and materials by the Port Authority. His office force, stenographers, and personnel of his staff engaged in the various activities under Mr. Wilson's direction, were supplied by the
148 Port Authority and they were regular employees on the payroll of the Port Authority. Travelling expenses and other expenses incurred by him in connection with the performance of his duties were paid by the Port Authority (Tr., p. 527).

33. Mr. Wilson had no outside office, no outside business connection or association of any kind whatsoever during the year 1933. He received no outside income during the year 1933 except such as was received from securities and investments owned by him (Tr., p. 527).

34. Mr. Wilson's name appeared on the payroll of the Port Authority and he was required to sign that payroll as were all employees of the Port Authority (Tr., p. 527).

35. Mr. Mulcahy was, during the year at issue (1932) and ever since has been, an employee of the Port of New York Authority. During the year 1932 Mr. Mulcahy was employed as Assistant General Manager of The Port of New York Authority and received a salary of \$10,950 for that year (Tr., p. 529).

36. Mr. Mulcahy's employment has continued from June 1, 1932, to the present date. On entering the Port Authority's employ, Mr. Mulcahy took an oath of office (Tr., p. 530).

37. It was understood that Mr. Mulcahy was to be at the office of the Port Authority, New York City, on each and every working day from 9 A. M. to 5 P. M. and from 9 A. M. to 12 noon on Saturdays, the normal working hours of all Port Authority employees, except, of course, on such occasions as his Port Authority duties might require his presence elsewhere. It was agreed that although generally the petitioner would be required to devote only the above mentioned hours to his Port Authority duties, he would, whenever necessary, devote such extra time to his duties as might be required without any extra compensation. As a matter of fact Mr. Mulcahy's duties as assigned for the year 1932 constantly required his presence at the offices of the Port Authority at hours other than and in excess of the normal working hours of other Port Authority employees (Tr., p. 530).

38. As Assistant General Manager in charge of administration Mr. Mulcahy's duties as assigned for the year 1932, involved the supervision of the entire personnel of the Port Authority. He was the administrative assistant to the General Manager, and as such assistant was engaged in all phases of the work of the Port Authority, in the execution of the compact, the comprehensive plan, and of the various statutes amendatory thereof and supplementary thereto. His duties were prescribed by the General Manager of the Port Authority, to whom Mr. Mulcahy was required to submit such reports on such matters as the General Manager from time to time required. In all of his duties Mr. Mulcahy was under the immediate and direct supervision of the General Manager of the Port Authority, and on occasions when Mr. Mulcahy differed with the General Manager in matters involving administration or other matters within the scope of his employment, he was directed to proceed in accordance with the direction of the General Manager (Tr. pp. 530, 531).

39. Mr. Mulcahy was required to submit monthly time reports, itemizing the number of hours worked in each day, and describing the work performed, the number of hours spent in connection with each type of work, and the number of hours worked each day over and above the standard seven hours (Tr. p. 531).

40. Mr. Mulcahy was furnished with an office by the Port Authority in the Port Authority's general offices. He was supplied with all necessary supplies and materials by the Port Authority. His office force, stenographers and personnel of his staff engaged in the various activities under Mr. Mulcahy's direction, were supplied by the Port Authority, and were regular employees on the payroll of the Port Authority. Traveling expenses and other expenses incurred by him in connection with the performance of his duties, were paid by the Port Authority (Tr. p. 531).

41. Mr. Mulcahy had no outside office, no outside business associations or connection of any kind whatsoever during the year 1932. He received no income whatever during the year 1932 except com-

pensation paid him by the Port Authority. Mr. Mulcahy's name appeared on the payroll of the Port Authority and he was required to sign the payroll as were all employees of the Port Authority (Tr. p. 532).

42. That the Port of New York Authority (hereinafter referred to as the Port Authority) was organized pursuant to a Compact between the States of New York and New Jersey, dated April 30, 1921, pursuant to Chapter 154 of the Laws of New York, 1921, and Chapter 151 of the Laws of New Jersey, 1921, and confirmed by resolution of the Congress of the United States, Public Resolution No. 17—67th Congress (S. J. Res. 88), and that the Port Authority was and is vested with the powers therein granted to it, or implied by the terms and provisions of said Compact, acts and statutes and such other powers as are granted or implied by Chapter 43 of the Laws of New York, 1922, and Chapter 9 of the Laws of New Jersey, 1922, adopted a comprehensive plan for the development of the Port of New York district, and such further powers as are granted or implied by such other statutes of the States of New York and New Jersey as pertain to said Port Authority (Based upon Stip., No. 3).

43. That the Compact hereinabove referred to was a treaty between the States of New York and New Jersey amending and supplementing the Treaty of 1834 between the same two States (Based upon Stip., No. 4).

44. That the Port Authority is a body politic and corporate and is the municipal corporate instrumentality and agency of the two States (Port Authority Trial Brief, Point II).

45. That the fundamental purpose of the two States of New York and New Jersey in adopting the Treaty of 1834 was to facilitate and encourage the development of the natural resources and advantages of the bay and harbor constituting the Port of New York, for the mutual benefit of the two States and the health, safety, and general welfare of the people thereof (Port Authority Trial Brief, pp. 8 to 10).

46. That by reason of the fact that the Hudson and North Rivers, the Kill van Kull and the Arthur Kill, as well as other portions of the bay and harbor of New York constitute and form the political boundary between the States of New York and New Jersey, it has been necessary that any action that has been taken for the development of the Port as a whole, be joint governmental action by the two States (Based upon Stip., No. 5).

47. That prior to and in the year 1916, the States of New York and New Jersey, whose northerly and southerly boundary lines lie within the Port of New York, found themselves faced with the gigantic and expensive problem of the Port's future development (Based upon Stip., No. 6).

48. That prior to 1916 and for almost two centuries, the development of the facilities of the Port had been unplanned and had proceeded in haphazard and uneconomic fashion (Port Authority Trial

Brief, pp. 6, 7, 11, 15, 19, et seq.; also Stip., Exhibits A and B; see also *New York Harbor Case*, 47 I. C. C. 643).

49. That the following are some of the facts with respect to the Port of New York:

153 (a) That about one tenth of the entire population of the United States lives within a radius of twenty-five miles of the Statue of Liberty, and derives its livelihood from industries and activities dependent upon the continued operation and functioning of the facilities of the Port of New York.

(b) That in this area lie the financial and industrial centers of the country.

(c) That the Port of New York is the focal point of our national transportation system and that more than half of our foreign commerce centers or clears within this district.

(d) That the Port of New York is one of the finest natural harbors in the world.

(e) That the Port of New York is the terminus in the United States of nearly all the important transatlantic lines (See Port Authority Trial Brief, pp. 19 to 23).

50. That subsequent to the adoption of the Treaty of 1834, the growth of American industry and prosperity, the coming of the railroads, the mounting volume of our foreign commerce, all gave rise to new social problems and new economic conflicts in the development of the Port (Port Authority Trial Brief, pp. 5 to 23).

51. That for seventy years prior to the year 1916, the two States had countenanced the slow and uncertain shuttling of freight
154 back and forth across the harbor waters to and from the railheads from the Jersey shore and had permitted their most valuable waterfront properties to become cluttered with railroad pier stations to the exclusion and loss of steamship traffic. That the harbor's freight handling facilities were inefficient, wasteful, and antiquated (Port Authority Trial Brief, pp. 5 to 23; see also Tr. p. 380).

52. That prior to the year 1916, the two States had failed to pay adequate heed to, or make provision for the motorization of vehicular traffic, which they were still ferrying across the waters of the Port in the same manner as had been done for the previous two hundred years, and that the two States had permitted this motorized traffic
50 to congest the streets of Manhattan that many of those streets had become almost impassable (Port Authority Trial Brief, pp. 5 to 23; see also Tr. p. 380).

53. That modern and efficient piers, terminals, and arteries of traffic were required in the Port District to carry on the functions of the Port and to sustain the life and health of the inhabitants of the Port District (Port Authority Trial Brief, pp. 5 to 23).

54. That prior to the year 1916, the freight handling system of the Port had not been fundamentally improved since the railroads had first come to the Jersey shore (Port Authority Trial Brief, pp. 9 and 22).

55. That in the year 1916, the Port District was in need of
 155 vehicular tunnels and bridges of coordinated freight handling
 facilities and freight terminals, of express highways and modern
 piers, warehouses, markets, and other similar facilities (Port Authority Trial Brief, pp. 14 to 23).

56. That up to and including the year 1916, the Port District had
 fallen behind in its highway and terminal development and that in
 consequence thereof the flow of food, goods, and merchandise through
 the Port had become more and more irregular and that terminal and
 traffic freight handling costs had become laden with the consequent
 burden of congestion and expense. (Port Authority Trial Brief, pp.
 15, 16, and 22; see also Tr. p. 380).

57. That these inadequate market facilities; lack of economical
 means of local transportation for foodstuffs, high expenses of deliver-
 ing finished and raw materials and inadequacy of terminal facilities
 were causing annual waste of millions of dollars to the people of the
 Port District (Port Authority Trial Brief, pp. 15, 16, and 22).

58. That the foregoing conditions had increased the cost of living
 to the citizens of the Port District and was jeopardizing their health
 and welfare (Port Authority Trial Brief, pp. 15, 16, and 22; see
 also Tr. pp. 380, 474).

59. That the Port of New York was and is the distributing center
 of the nation and that export and import costs for the entire nation
 are affected by the inadequacy or inadequacy of the terminal
 156 facilities of the Port. That the range of cost in the handling
 and transportation of the nation's imports and exports through
 the Port area is frequently a determinant of the success or failure
 of the nation's foreign trade (Port Authority Trial Brief, p. 17).

60. That prior to 1916 and for the foregoing reasons, the nation's
 business relations with the rest of the world were being impeded
 by the burden of the Port of New York's inadequate terminal, high-
 way, and transportation systems (Port Authority Trial Brief, p. 17).

61. That the matters enumerated above constituted a grave and
 serious crisis affecting the health, welfare, and safety of the peoples
 of the two States and of the nation, and were among the factors
 which led to the making of the Compact between the two States and
 to the creation of the Port Authority as their joint agent and instru-
 mentality in the work of carrying out a comprehensive program of
 port, harbor, and highway development (Port Authority Trial Brief,
 pp. 5 to 23).

62. That the first step to correct these evil and dangerous con-
 ditions was taken in 1911 when President Wilson, then Governor of
 New Jersey, appointed a commission to study the problem of the
 development of the Port of New York in cooperation with a com-
 mission representing the State of New York (Based upon Stip.
 No. 7).

63. That following the report of that commission to the
 157 Legislature of New Jersey in 1914, there was created a New
 Jersey Harbor Commission which was later merged, together

with several others, into the New Jersey Board of Commerce and Navigation (Stip., Nos. 8 and 9).

64. That as a result of reports made by that Commission, the then Governor of New Jersey, Honorable James F. Fielder, appointed a Special Committee to discover ways and means for securing a readjustment of the freight rates to the Port District in favor of the New Jersey side of the harbor. That this committee, which was known as the "Committee on Ways and Means to Prosecute the Case of Alleged Railroad Rate and Service Discrimination at the Port of New York," instituted a proceeding before the Interstate Commerce Commission which was officially known as the New York Harbor Case, Docket No. 8994, 47 I. C. C. 643. This case, which sought a revision of railroad freight rates in favor of New Jersey, aroused considerable opposition on the part of the State of New York, the City of New York, and various civic and commercial organizations (Stip., Nos. 10, 11, and 12).

65. The decision of the Interstate Commerce Commission in the New York Harbor Case aroused considerable public discussion of the problems involved, including discussions of the desirability of a revision in the methods of handling the port traffic, the desirability of unifying the port's transportation system, and such efforts as might be desirable upon the part of both States to effectuate the reorganization (Stip., No. 13).

66. That in 1917 and upon the invitation of the New York State Chamber of Commerce, Governor Edge of New Jersey and Governor Whitman of New York were brought into conference on the problems of Port development. That subsequently, in the year 1917, the Legislatures of the two States authorized their respective Governors to appoint members of the New York-New Jersey Port and Harbor Development Commission and appropriated \$450,000 for the work of the Commission (Stip., Nos. 14 and 15).

67. That the said Commission was duly appointed by the Governors of the two States and directed, pursuant to the Act providing for its appointment, to make a comprehensive survey of port and harbor conditions, and if any conditions therein appeared to be in need of remedy or change, to recommend proper and adequate remedies and changes therefor. That said Commission undertook and thoroughly carried out said survey and made progress reports of conditions from time to time; including the recommendations, in 1918, of an interstate compact to provide a bi-state corporate agency, to carry out a comprehensive plan of port and harbor development under the direction of the two States and proposed a tentative draft of such a Compact for consideration by the Governors and Legislatures of both States. That the Preliminary Joint Report of the New York-New Jersey Port and Harbor Development Commission, containing said recommendations, and which was transmitted to the Legislatures of both States on February 18, 1918 (Exhibit A, attached to the stipulation) is a true and accurate survey of port

159 and harbor conditions as of that time (Based on Stip., No. 16).

68. That thereafter and in 1919, said Joint Commission, having completed its survey, presented to and filed with the Legislatures of the two States and with the Governors thereof, their "Joint Report with Comprehensive Plan and Recommendations". (Exhibit B, attached to the stipulation). That said Joint Report constitutes a true and accurate finding of the port situation and problem as of the year 1920 (Based on Stip., No. 19).

69. That the adoption of the Compact between the States of New York and New Jersey and the enactment of the Comprehensive Plan was preceded by the report of a qualified legislative fact finding commission, to wit: the New York-New Jersey Port and Harbor Development Commission, which report (being the same report referred to in the preceding paragraph) fully and accurately set forth to the Legislatures the facts which necessitated the signing of the Compact and the enactment of the Comprehensive Plan (Based on Stip., No. 20).

70. That on March 29, 1920, Governor Alfred E. Smith sent a special message to the Legislature of the State of New York urging upon the Legislature the adoption of the Compact and that another special message urging its adoption was subsequently sent to the Legislature of the State of New York by Governor Miller during the year 1921, being the said messages set forth in Exhibits C and D, attached to the stipulation (Based on Stip., No. 21).

160 71. That thereafter the Legislatures of the States of New York and New Jersey passed Acts authorizing certain designated persons, as Commissioners on the part of said States, to execute an agreement or compact between said States of New York and New Jersey in the form set forth in the said acts. The Act of the State of New York, being Chapter 154, Laws of New York, 1921, became a law April 2, 1921 with the approval of the Governor and the Act of the State of New Jersey, being Chapter 151 of the Laws of New Jersey, 1921, became a law April 7, 1921 with the approval of the Governor of that State. That subsequently and in the month of August 1921, the Congress of the United States consented to said Compact by Public Resolution No. 17—67th Congress; S. J. Res. 88 (August 23, 1921) (Stip., No. 22).

72. That on April 30, 1921, the aforesaid Compact between the States of New York and New Jersey, establishing the Port District and creating The Port of New York Authority, was formally signed by the Commissioners duly authorized so to do by the respective Legislatures in the Great Hall of the Chamber of Commerce of the State of New York (Stip., No. 23).

73. That by Chapter 152 of the Laws of New Jersey, 1921, J. Spencer Smith, Frank R. Ford, and DeWitt Van Buskirk were selected and appointed as Commissioners to "The Port of New York Authority." That by Chapter 203 of the Laws of New York, 1921, the Governor of the State of New York was authorized by and with

161 the consent of the Senate to appoint three Commissioners to the aforesaid Port Authority, and that Nathan L. Miller, the then Governor of the State of New York, did, pursuant to such legislation, and with the consent of the Senate, appoint Eugenius H. Outerbridge, Alfred E. Smith, and Lewis H. Pounds as Commissioners thereof. That having taken the oath of office the aforesaid Commissioners met for organization on April 25, 1921, all of the Commissioners being present, and organized The Port of New York Authority by electing officers and appointing members of the staff (Stip., No. 24).

74. That the signing of the said Compact of April 30, 1921, between the States of New York and New Jersey, consented to and ratified by the Congress of the United States, and the adoption of the Comprehensive Plan for the development of the Port of New York, were determined by the Legislatures and Governors of both States to be, and were, acts necessary to the solution of the governmental, economic, and sociological problems that confronted the States of New York and New Jersey in properly developing the Port of New York District in the interests of the health, welfare, and safety of the peoples of the two States and of the nation (see Compact Recitals and also Joint Report, Exhibit B, p. 1. See also Port Authority Trial Brief, pp. 14 to 29).

75. That the port problem at the Port of New York is unique and extraordinary in character and has required the adoption by the sovereign governments of the State of New Jersey and 162 the State of New York of extraordinary measures to meet the needs of the peoples of the two States and of the nation in its proper and adequate development and that extraordinary measures upon the part of the two States with respect to the development of the Port are required to fulfill their governmental obligations to safeguard the welfare, health, and safety of their inhabitants (see Joint Report, Exhibit B, p. 1; Port Authority Trial Brief, p. 15).

76. That the said Compact of 1921 created a district to be known as the "Port of New York District" having specified geographical boundaries set forth in said Compact, and gave to The Port of New York Authority certain powers and jurisdiction therein in said Compact more particularly set forth (Stip., No. 25).

77. That pursuant to the terms and provisions of the Compact, the aforesaid Port Authority investigated conditions within the port district and made findings and recommendations with respect thereto. That pursuant to Chapter 203 of the Laws of New York, 1921, and Chapter 152 of the Laws of New Jersey, 1921, the Port Authority on or about the 21st day of December 1921, presented to the Governor of the State of New York and to the Governor of the State of New Jersey its report and recommendations together with a plan for the comprehensive development of the Port of New York, said "Report with Plan for the Comprehensive Development of the Port of New York" being Exhibit F, attached to the

163 stipulation. That the conclusions reached in said Report were derived from an intensive study and review of the work of the New York-New Jersey Port and Harbor Development Commission during the years 1917 to 1920, inclusive (Based on Stip., No. 26).

78. That pursuant to Article X of the aforesaid Compact of April 30, 1921, and in accordance with the findings and recommendations of the New York-New Jersey Port and Harbor Development Commission embodied in its Joint Report with Recommendations hereinbefore referred to, and of The Port of New York Authority embodied in its Report with Plan for the Comprehensive Development of the Port of New York, dated December 21, 1921, the two States of New York and New Jersey adopted by joint legislation a Comprehensive Plan for the development of the Port of New York District and mutually agreed to carry out said plan and entrusted the effectuation thereof to The Port of New York Authority. That said comprehensive plan is embodied in Chapter 43 of the Laws of New York, 1922, and Chapter 9 of the Laws of New Jersey, 1922, approved by the Congress of the United States (Public Resolution No. 66—67th Congress—H. J. Res. 337), and is the same plan appearing on pages 33 to 44 inclusive of the Port Authority Statute Book, Exhibit E, attached to the stipulation (Stip., No. 27).

79. That it is the carrying out of this Compact and Comprehensive Plan which constitutes the work and function of the Port Authority (see Stip., Nos. 28 and 29, and Port Authority Trial Brief, pp. 34 to 48 inclusive).

164 80. That under the provisions of the Comprehensive Plan, the Port Authority was authorized and directed to proceed with the development of the Port of New York in accordance with that Comprehensive Plan is rapidly "as may be economically practicable" and was vested with all necessary and appropriate powers not inconsistent with the Constitution of the United States or of either State to effectuate the same, except the powers to levy taxes or assessments. The two States have declared that they regard the Port Authority as their municipal corporate instrumentality for the purpose of developing the Port and effecting the pledge of the States in the Compact (see Comprehensive Plan, Section 8; Stip., No. 28).

81. That in a joint resolution (Public Resolution No. 66—67th Congress), the consent of Congress was given to the carrying out and effectuation of the Comprehensive Plan and the Port Authority was authorized and empowered to carry out and effectuate the same (Stip. No. 29).

82. That the functions of the Port Authority are carried on by twelve Commissioners, six resident voters, each from the States of New York and New Jersey, who are chosen by the respective Governors with the advice and consent of their State Senates. The Commissioners from the State of New York may be removed only upon charges and after a hearing by the Governor. The Commissioners from the State of New Jersey may be removed only upon charges

and after a hearing by the Senate of the State of New Jersey (Stip., No. 94a).

165 83. That no action of the Commissioners of the Port Authority is binding unless approved by a majority of the Commissioners from each State. The Governor of each State has a veto power over the acts of each Commissioner from his State and no action of any Commissioner has force or effect until a specified period after the minutes of each meeting have been transmitted to the Governor of his State (Stip., No. 94b).

84. That under the provisions of Chapter 222, Laws of New York, 1928, employees who transfer to Port Authority service from State service and who are already members of the State Retirement System, may continue in that System after such transfer to Port Authority service. Under the provisions of Chapter 259, Laws of New York, 1935, all other employees of the Port Authority are permitted to join the New York State Retirement System (Stip., No. 94c).

85. That the Commissioners of the Port Authority are required to and do subscribe to oaths of office (Based on Stip., No. 94d).

86. Reports on all activities of the Port Authority are required to be and are submitted to the Legislatures and Governors of both States annually and at other times when requested (Stip., No. 94e).

87. Until revenues from the operations of the Port Authority are adequate to meet all expenditures, the legislatures of the two states are obligated to appropriate, in equal amounts, annually, 166 for the salaries, office, and other administrative expenses, sums as recommended by the Port Authority and approved by the Governors of the two states up to \$100,000 in any one year. The Port Authority is prohibited from incurring any such obligation for salaries, office, and other administrative expenses prior to the making of appropriations adequate to meet same by the two legislatures (Stip., No. 94h).

88. That under the laws of New York and New Jersey the Port Authority is given power to make vehicular rules and regulations, with respect to the bridges, tunnels, and transportation facilities of the Port Authority; its police force being designated as peace officers of both states; to enforce, through actions in the State Courts, such regulations, as well as regulations adopted directly by legislation of the States. The violations themselves are incorporated as an integral part of the Criminal Laws of the States of New York and New Jersey; penalties are prescribed therefor; and the inferior criminal courts of the States are given jurisdiction to enforce penalties (Stip., No. 95b).

89. That under the Comprehensive Plan and other statutes of the two states, the Port Authority is given power and authority to fix tolls and charges for the use of all facilities (Stip., No. 95c).

90. That under the laws of the two states bonds and certain obligations of the Port Authority are by legislative enactment made legal for investment by fiduciaries in both states (Stip., No. 95d).

167 91. That in order to protect public funds deposited by the Port Authority, the statutes of both States give such funds a preference, by providing that all banks and other financial institutions are authorized to give to the Port Authority undertakings, with such sureties as the Port Authority shall approve to secure the deposited funds of the Port Authority, or in lieu of such sureties to deposit with the Port Authority as collateral, such securities as the Port Authority may approve (Stip., No. 95e).

92. That the Port Authority is authorized to make suitable rules and regulations for the improvement of the conduct of navigation and commerce in the Port of New York, which must be approved by the legislatures of both States, and the States are obligated to provide penalties for violations of such rules or regulations or of any order issued by the Port Authority within its jurisdiction (Stip., No. 95f).

93. That the Port Authority has the power to hold investigations in connection with matters pertaining to the planning and developing of the Port of New York, and for such purposes jurisdiction "of any and all persons" residing in, or owing property within, the State, and power to issue subpoenas in connection with such jurisdiction. For failure to comply with such Port Authority subpoenas, the Supreme Court may, upon application of the Port Authority, commit such person to jail, or otherwise punish for contempt (Stip., No. 95g).

168 94. That orders of the Port Authority with respect to the regulation or control of port affairs within its jurisdiction are enforceable by mandamus or injunction, or any other relief appropriate to the case. Actions and proceedings involving the Port Authority are entitled to a preference "over all civil cases" (Stip., No. 95h).

95. That under the Compact, Comprehensive Plan, and Statutes thereafter adopted by the two States, the Port Authority has the power to construct public highways within the Port District, in connection with the execution of the Comprehensive Plan (Stip., No. 95i).

96. That the Compact directs the Port Authority to make plans, from time to time, for the development of the Port District, supplementary to or amendatory of any plan theretofore adopted, and when such plans are duly approved by the legislatures of the two States, the Compact provides that they shall be binding upon both States with the same force and effect as if incorporated in the Compact itself (Stip., No. 95m).

97. That the Port Authority may from time to time make recommendations to the legislatures of the two States or to the Congress of the United States, based upon study and analysis, for the better conduct of the commerce passing in and through the Port of New York, the increase and improvement of transportation and terminal facilities therein, and the more economical and expeditious handling of such commerce (Stip., No. 95n).

169 98. That the Port Authority may petition any interstate commerce commission (or like body), public service commission, public utility commission (or like body) or any other federal, municipal, state or local authority, administrative, judicial or legislative, having jurisdiction in the premises, for the adoption and execution of any physical improvement, change in method, rate of transportation, system of handling freight, warehousing, docking, lightering or transfer of freight, which, in the opinion of the Port Authority may be designed to improve or better the handling of commerce in and through said District, or improve terminal and transportation facilities therein. It may intervene in any proceeding affecting the commerce of the Port (Stip., No. 95c).

99. That the States of New York and New Jersey have reserved the right to add to, modify, or change any part of the Comprehensive Plan, with the concurrence of the other (Stip., No. 95p).

100. That the Port Authority is authorized and directed by the two States to proceed with the development of the Port of New York in accordance with the Comprehensive Plan as rapidly as may be economically practicable, and is vested with all necessary and appropriate powers not inconsistent with the Constitution of the United States or of either State, to effectuate the same, except the power to levy taxes and assessments (Stip., No. 95q).

101. That in the execution of the Comprehensive Plan the Port Authority has the power of eminent domain (Based upon Stip., No. 96).

170 102. That by special statutes of the States of New York and New Jersey, it is provided that the Port Authority shall be exempt from state and municipal taxation with respect to all property of the Port Authority. The statutes of the two states enacting the Comprehensive Plan, provides that "The bonds or other securities issued by the Port Authority shall at all times be free from taxation by either state" (Stip., No. 97).

103. That the Port Authority has no stock and no stockholders; that the Port Authority, although in corporate form is wholly owned and controlled by the two sovereign states, of New York and New Jersey, and not by any private persons or corporations (Based upon Stip., No. 98a; see also Compact and Comprehensive Plan and Point II of Port Authority's reply brief).

104. That all projects of the Port Authority are operated in the interest of the public and no profits inure to the benefit of private persons (Stip., No. 98b).

105. That the States of New York and New Jersey obligated themselves to the payment of the administrative expenses of the Port Authority, each in the amount of One hundred thousand (\$100,000) Dollars, per year, until the revenues of the Port Authority were adequate to meet its expenditures (Stip., No. 98d).

106. That the various projects of the Port Authority are, and have been declared by the two states to be in all respects for the bene-

171 fit of the people of the two states, for the increase of their commerce and prosperity and for the improvement of their health and living conditions, and that the Port Authority is and has been declared by the two states to be performing a governmental function in undertaking the construction, maintenance and operation of its bridges and tunnels and Inland Terminal No. 1 and in effectuating the Comprehensive Plan. That under the laws of both States it is required to pay no taxes or assessments upon any of the property acquired by it for the construction, operation, and maintenance of such projects (Based upon Stip., No. 98f).

107. That on August 7, 1923, the Governors of the State of New York and of the State of New Jersey delivered to the Port Authority a joint statement outlining their views as to construction of additional vehicular tunnels or bridges between the States of New York and New Jersey, and requested the Port Authority to investigate the matter and make a report to said Governors with suggested legislation, if any were necessary, in time to be submitted to the respective legislatures early in their sessions of 1924. The Governors said that they favored the construction at the earliest possible moment of additional vehicular tunnels or bridges between the State of New York and the State of New Jersey which were to be determined upon, constructed and financed by the Port Authority (Stip., No. 30; see also Tr., p. 473, et seq.).

108. Following the receipt of the aforesaid communication
172 from the Governors of the two states, the Port Authority proceeded to make preliminary studies of traffic conditions, present building costs, and other material questions relating to transportation between the New York and New Jersey shores of the Hudson River, the Arthur Kill and the Kill van Kull insofar as they might bear upon the question of the construction of tunnels or bridges and the most desirable locations therefor (Stip., No. 31).

109. That on December 5, 1923, after due notice had been given in the public press and by direct communication to the municipalities, trade bodies and transportation interests within the Port District, a public hearing on the subject of additional vehicular tunnels or bridges between the State of New York and the State of New Jersey was held, which meeting was attended by eighty persons representing forty-eight separate organizations, of which forty presented written or oral statements relating to the subject (Stip., No. 32).

110. That on December 21, 1923, the Commissioners of the Port Authority rendered to the Governor of the State of New York and to the Governor of the State of New Jersey, a "Report on Vehicular Tunnels and Bridges" which set forth the studies and hearings upon the subject of additional vehicular tunnels or bridges between the States of New York and New Jersey, and recommended, among other things, that preliminary engineering and traffic studies of plans for a bridge north of 125th Street, between the Borough of Manhattan and the State of New Jersey, and for at least two

173 additional vehicular tunnels between New York and New Jersey should be promptly undertaken (Stip., No. 33).

111. That on January 19, 1924, The Port of New York Authority submitted to the Governor of the State of New York and to the Governor of the State of New Jersey its Report for the calendar year 1923 which contained at pages 21 to 24 inclusive thereof, a summary of further findings and studies with respect to the necessity of constructing additional vehicular crossings between the States of New York and New Jersey (Stip. No. 34).

112. That by joint legislation embodied in Chapter 125 of the Laws of New Jersey, 1924, and Chapter 230 of the Laws of New York, 1924, the States of New York and New Jersey authorized The Port of New York Authority in partial effectuation of the comprehensive plan for the development of the Port of New York, to construct, operate, maintain and own a bridge with the necessary approaches thereto across the Arthur Kill between Perth Amboy on the New Jersey side and Tottenville on the New York side (Stip. No. 35).

113. That by joint legislation embodied in Chapter 149 of the Laws of New Jersey, 1924, and Chapter 186 of the Laws of New York, 1924, the States of New York and New Jersey authorized The Port of New York Authority, in partial effectuation of the comprehensive plan for the development of the Port of New York to construct, 174 operate, maintain and own a bridge with the necessary approaches thereto across the Arthur Kill between Elizabeth on the New Jersey side and Howland Hook on the New York side (Stip. No. 36).

114. That during the calendar year 1924 the Port Authority, with the aid of appropriations by the two states aggregating \$200,000 appropriated therefor, made borings, surveys and engineering studies as to the character and location of said bridges, thoroughly canvassed local sentiment, attended meetings of local interests and meetings with committees appointed by the Mayors of the three municipalities concerned, made counts of the vehicular traffic crossing all the ferries on the Arthur Kill and Kill van Kull, investigated the records of the ferry companies and made other studies with reference to the necessary and desirability of constructing the aforesaid bridges across the Arthur Kill.

That in its annual report for the calendar year 1924 to the Governor of the State of New York and the Governor of the State of New Jersey, dated January 24, 1925, the Port Authority presented to the two states a resumé of its work in connection with said bridges, set forth on pages 42 to 43 inclusive of said report (Stip. No. 37).

115. That during the calendar year 1925, the Port Authority continued its studies with respect to the two bridges across the Arthur Kill, and obtained the approval of the War Department of the Federal Government to construction of said bridges (Stip. No. 38).

175 116. That during the year 1926, the Port Authority in accordance with the directions of the two State Legislatures, as aforesaid, commenced construction of the two bridges across the

Arthur Kill, one between Perth Amboy in the State of New Jersey and Tottenville in the State of New York, which bridge was named the Outerbridge Crossing, and the other between Elizabeth in the State of New Jersey and that section of Staten Island in the State of New York known as Howland Hook, which bridge was named the Goethals Bridge. That such construction work was pursued until the said bridges were opened for traffic on June 29, 1928, having been completed at a cost in excess of \$17,000,000. That this cost was financed by the advance to the Port Authority of \$4,000,000 by the two states, and through the sale of bonds of the Port Authority, which bonds are known as "New York-New Jersey Interstate Bridge Bonds—Series A," in the amount of \$14,000,000 (Stip., No. 39).

117. That the Port Authority has since continued to own, maintain, and operate, and is at present maintaining and operating and does own the aforesaid bridges over the Arthur Kill, in partial effectuation of the Comprehensive Plan. That in its operation of these bridges the Port Authority may and has charged tolls to defray the maintenance, operation, and general expenses of these bridges, interest charges, and to repay the aforesaid "New York-New Jersey

Interstate Bridge Bonds—Series A," the advances made by
176 the two states, debt service on General and Refunding Bonds (which, however, under existing statutes cannot be issued for any new facilities except two inland terminals in Manhattan and two marine terminals in New Jersey) and, through its general reserve fund, debt service on its other now outstanding bonds. That the total of the tolls paid during the year 1934 on these two bridges was in excess of \$400,000, being paid by traffic in excess of 800,000 vehicles (Stip., No. 40).

118. That for the years 1928, 1930, and 1931 the operation of these bridges resulted in annual surpluses, as follows:

| | |
|------|----------------|
| 1928 | \$272, 676. 75 |
| 1930 | 76, 683. 54 |
| 1931 | 40, 673. 37 |

That for the years 1929, 1932, 1933, and 1934 the operation of these bridges resulted in annual net deficits, as follows:

| | |
|------|---------------|
| 1929 | \$23, 340. 21 |
| 1932 | 187, 272. 17 |
| 1933 | 295, 534. 46 |
| 1934 | 298, 851. 29 |

The surplus noted for the year 1928 resulted from the fact that interest on the funded debt of the two bridges for that year was charged to the investment account, for the reason that, although the two bridges had been opened to traffic on June 29, 1928, as aforesaid, the Commissioners of the Port Authority did not regard the
177 construction program as completed until the end of the year 1928 (Stip., No. 41).

119. That in the operation of these bridges and direction of traffic thereon, the Port Authority maintains its own uniform police force consisting of men appointed by the Port Authority and who are

designated as regular peace and police officers of both states by Chapter 388, Laws of New York, 1928, and Chapter 113, Laws of New Jersey, 1932 (Stip., No. 42).

120. That by joint legislation embodied in Chapter 41 of the Laws of New Jersey, 1925, and Chapter 211 of the Laws of New York, 1925, the States of New York and New Jersey authorized and empowered The Port of New York Authority, in partial effectuation of the Comprehensive Plan for the development of the Port of New York, to construct, operate, maintain, and own a bridge with the necessary approaches thereto across the Hudson River from points between 170th Street and 185th Street, Borough of Manhattan, and points approximately opposite thereto in the Borough of Fort Lee, Bergen County, New Jersey, and appropriated the sum of \$200,000—\$100,000 by each State—for the making of preliminary studies with reference to said bridge (Stip., No. 43).

121. That during the calendar year 1925, the Port Authority undertook studies for the bridge across the Hudson River from Fort Lee to Manhattan of the same character undertaken with respect to the Arthur Kill Bridges, and that said studies are reported upon in the annual report of The Port of New York Authority to the Governors of the States of New York and New Jersey for the calendar year 1925, dated January 15, 1926, at pages 13 to 19 inclusive thereof (Stip., No. 44).

122. That during the calendar year 1926, the Port Authority continued its studies with reference to the character and location of the Hudson River Bridge between Washington Heights in the Borough of Manhattan, City of New York and the Borough of Fort Lee, New Jersey. That such studies were fully reported upon by the Port Authority to the Governor and Legislature of the State of New York and to the Governor and Legislature of the State of New Jersey in the annual report of The Port of New York Authority for the calendar year 1926, dated January 20, 1927, at pages 47 to 69 inclusive thereof (Stip., No. 45).

123. That during the year 1927, the Port Authority, in accordance with the directions of the two State Legislatures, as aforesaid, commenced construction of the said bridge over the Hudson River between Fort Lee in the State of New Jersey and the Borough of Manhattan in the City and State of New York, which bridge is known as the George Washington Bridge. That such work was pursued until the said bridge was opened for traffic on October 25, 1931, having been completed at a cost in excess of \$57,000,000. That this cost was financed by the advance to the Port Authority of \$9,800,000 by the two states, and through the sale of bonds of the Port Authority, which bonds are known as "New York—New Jersey Interstate Bridge Bonds, Series B", in the amount of \$50,000,000 (Stip., No. 46).

124. That the Port Authority has since continued to own, maintain and operate, and is at present maintaining and operating and does own the aforesaid George Washington Bridge over the Hudson River,

in partial effectuation of the Comprehensive Plan. That in its operation of this bridge the Port Authority may charge and is charging tolls to defray the maintenance, operation, and general expenses of this bridge, interest charges, and to repay the bonds sold for its construction, the advances by the two States, debt service on General and Refunding bonds (which, however, under existing statutes cannot be issued for any new facilities except two inland terminals in Manhattan and two marine terminals in New Jersey) and, through its General Reserve Fund, debt service on its other now outstanding bonds. That the total of the tolls paid during the year 1934 was in excess of \$3,300,000, being paid by traffic in excess of 6,150,000 vehicles (Stip. No. 48).

125. That for the years 1931 to 1934, inclusive, the operation of the George Washington Bridge resulted in a net income from operations, prior to deductions for amortization, as follows:

| | | |
|------|-------|-----------------|
| 1931 | ----- | \$504, 264. 08 |
| 1932 | ----- | 1, 473, 363. 61 |
| 1933 | ----- | 1, 142, 770. 42 |
| 1934 | ----- | 1, 356, 476. 67 |

(Stip. No. 49.)

180 126. That in the operation of this bridge and direction of traffic thereon, the Port Authority maintains its own uniform police force consisting of men appointed by the Port Authority and who are designated as regular peace and police officers of both states by Chapter 388, Laws of New York, 1928, and Chapter 113, Laws of New Jersey, 1932 (Stip. No. 50).

127. That by joint legislation embodied in Chapter 97 of the Laws of New Jersey, 1925, and Chapter 279 of the Laws of New York, 1926, The Port of New York Authority was authorized and empowered, in partial effectuation of the Comprehensive Plan for the development of the Port of New York, to construct, operate, maintain, and own a bridge with the necessary approaches thereto across the Kill van Kull from Bayonne on the New Jersey side to Staten Island on the New York side (Stip. No. 51).

128. That during the calendar year 1926, the Port Authority continued its studies with reference to the character and location of such a bridge across the Kill van Kull between Bayonne in the State of New Jersey and Port Richmond, Staten Island, in the State of New York. That such studies were fully reported upon by the Port Authority to the Governor and Legislature of the State of New York in the annual report of The Port of New York Authority for the calendar year 1926, dated January 20, 1927, at page 67 thereof (Stip. No. 52).

129. That during the year 1928, the Port Authority, in accordance with the authorization of the two State Legislatures, as aforesaid, commenced construction of the said bridge over the Kill van Kull between the City of Bayonne on the New Jersey side and Port Richmond, Staten Island, on the New York side, which bridge was named the Bayonne Bridge. That such work was pursued until the Bayonne Bridge was opened for traffic on Novem-

ber 15, 1931, having been completed at a cost in excess of \$13,000,000. That this bridge was financed by the advance to the Port Authority of \$4,100,000 by the two states, and through the sale of bonds of the Port Authority, which bonds are known as "New York-New-Jersey Interstate Bridge Bonds, Series C," in the amount of \$12,000,000 (Stip. No. 53).

130. That the Port Authority has since continued to own, maintain, and operate, and is at present maintaining and operating and does own the aforesaid Bayonne Bridge over the Kill van Kull, in partial effectuation of the Comprehensive Plan. That in its operation of this bridge the Port Authority may charge and is charging tolls to defray the maintenance, operation, and general expenses of this bridge, interest charges and to repay the bonds sold for its construction, the advances by the two States, debt service on General and Refunding Bonds (which, however, under existing statutes cannot be issued for any new facilities except two inland terminals in Manhattan and two marine terminals in New Jersey) and, through its General Reserve Fund, debt service on its other now outstanding bonds. That the total of the tolls paid during the year 1934 was in excess of \$210,000, being paid by traffic in excess of 450,000 vehicles (Stip. No. 54).

131. That for the year 1931, the operation of the Bayonne Bridge resulted in annual surplus of \$25,400.29.

That for the years 1932 to 1934, inclusive, the operation of the Bayonne Bridge resulted in annual net deficits, as follows:

| | |
|-----------|--------------|
| 1932----- | \$101,468.11 |
| 1933----- | 240,890.18 |
| 1934----- | 163,848.67 |

The surplus noted for the year 1931 resulted from the fact that interest on the funded debt of the bridge for that year was charged to the investment account, for the reason that although the bridge was opened for traffic on November 15, 1931, as aforesaid, the Commissioners of the Port Authority did not regard the construction program as completed until the end of the year 1931 (Stip. No. 55).

132. That in the operation of this bridge and direction of traffic thereon, the Port Authority maintains its own uniform police force consisting of men appointed by the Port Authority and who are designated as regular peace and police officers of both states by Chapter 388, Laws of New York, 1928, and Chapter 113, Laws of New Jersey, 1932 (Stip. No. 56).

133. That prior to, and independently of their consideration of a Comprehensive Plan for the development of the Port of New York, the States of New York and New Jersey had for many years, back at least as far as 1906, examined and investigated the necessity for, and practicability of, construction of one or more vehicular bridges or tunnels across the North or Hudson River between the Borough of Manhattan, City of New York, and the neighboring metropolitan areas on the westerly side of the River in the State of New Jersey (Stip. No. 57).

134. That by Chapter 260 of the Laws of New York, 1906, there was created "The New York Interstate Bridge Commission," consisting of three members appointed by the Governor, for the purpose of conferring, on behalf of the Governor and Legislature of the State of New York, with the Governor and Legislature of the State of New Jersey, for the purpose of considering the feasibility and practicability of constructing one or more bridges over the Hudson River from the City of New York to the State of New Jersey at the joint expense of both States (Stip. 58).

135. That by Chapter 319 of the Laws of New York, 1907, the number of Commissioners of the New York Interstate Bridge Commission was increased to five, one of the additional members to be appointed by the Mayor of the City of New York and the other to be the incumbent of the office of Commissioner of Bridges of the said City. From time to time thereafter additional legislation was enacted continuing the Commission, making appropriations for its needs and extending its powers. By Chapter 189 of the Laws of New York, 1913, the Commission was authorized to consider the possibilities of vehicular tunnel construction and its name changed to "The
184 New York State Bridge and Tunnel Commission" (Stip. No. 59).

136. That throughout its existence the New York State Bridge and Tunnel Commission conferred and cooperated with New Jersey Commissions and other agencies, both official and unofficial in character, and rendered reports to the Governor and Legislature of the State (Stip. No. 60).

137. That by Chapters 49 and 50 of the Laws of New Jersey, 1918, the Governor and Legislature of that State created The New Jersey Interstate Bridge and Tunnel Commission and authorized the construction of a bridge or tunnel or tunnels across the Hudson and Delaware Rivers at the direct expense (so far as New Jersey's share of the cost was involved) of the State (Stip., No. 62).

138. That the New Jersey State Legislature of 1919, by Chapter 70 of the Laws of New Jersey, 1919, provided funds in the amount of one million dollars for the construction of a tunnel or tunnels under the Hudson River and five hundred thousand dollars for construction of a bridge across the Delaware River and ten thousand dollars for expenses incidental to the work and enabled The New Jersey Interstate Bridge and Tunnel Commission to take up with renewed vigor the final preliminary work prior to construction of the interstate bridges and tunnels which the Legislature directed the Commission to construct. That the Legislature of the State of

185 New York took similar action immediately in the same year and provided as its share of funds for the construction of a tunnel or tunnels by appropriating for the use of The New York Interstate Bridge and Tunnel Commission the sum of one million dollars (Stip., No. 63).

139. That on or about the 30th day of December 1919, pursuant to the authorization of the Legislatures and Governors of both States,

the State of New York, acting by and through The New York Interstate Bridge and Tunnel Commission, and the State of New Jersey, acting by and through The New Jersey Interstate Bridge and Tunnel Commission, entered into an agreement for construction of an interstate vehicular tunnel under the Hudson River between the City of New York and the City of Jersey City, under which said tunnel was to be constructed and operated jointly by the Commissioners as direct agents and representatives of the two States. That prior to the signing of said agreement the Congress of the United States consented thereto by Public Resolution No. 10—66th Congress (S. 409) (Stip., No. 64).

140. That in the year 1920 The New Jersey Interstate Bridge and Tunnel Commission and The New York Interstate Bridge and Tunnel Commission submitted to the Legislatures of their respective states a complete report of their studies and activities during the year 1919 as to the nature and location of the proposed vehicular tunnel (Stip. No. 65).

186 141. That said tunnel was constructed by said Commission and is now known as the Holland Tunnel. That the share of the cost of the construction of said tunnel to be borne by the State of New York was met by direct appropriations of the State. That New Jersey's share of the cost of construction of said tunnel was defrayed by the proceeds of a bond issue covering the cost of construction, both of said tunnel and of the Delaware River Bridge, which bond issue was authorized by the Governor and the Legislature of the State of New Jersey following its approval by a referendum vote of the people of that State (Stip., No. 66).

142. That following the construction of said Holland Tunnel and its operation over a period of years by the aforesaid New York Interstate Bridge and Tunnel Commission and the aforesaid New Jersey Interstate Bridge and Tunnel Commission, acting as a joint Commission on behalf of both States, it was determined by the States of New York and New Jersey, acting through the Governors and Legislature thereof, that the operation of said tunnel facility should be conducted and continued as part of the operations of The Port of New York Authority in carrying out the Comprehensive Plan for the development of the Port of New York. Accordingly, by Chapter 247 of the Laws of New Jersey, 1930, and by Chapter 421 of the Laws of New York, 1930, the New York—New Jersey Interstate Bridge and Tunnel Commission was merged with The Port of New York Authority, and the Port Authority was vested
187 by the two States of New York and New Jersey with the control, operation, and maintenance of the Holland Tunnel (Stip., No. 67).

143. That by the joint legislation of the two states, embodied in Chapter 4 of the Laws of New Jersey, 1931, and Chapter 47 of the Laws of New York, 1931, the two States declared a bi-state policy in regard to certain vehicular bridges and tunnels within the Port of New York District, and in furtherance of said policy, vested the

control and operation of the Holland Tunnel in The Port of New York Authority, and authorized the Port Authority to construct an additional interstate vehicular tunnel. That in declaring said policy the States agreed that the vehicular traffic moving across the interstate waters within the port of New York district, created by the Compact, constitutes a general movement of traffic which follows the most accessible and practicable routes, and that the users of each bridge or tunnel benefit by the existence of every other bridge or tunnel since all such bridges and tunnels as a group facilitate the movement of such traffic and relieve congestion at each of the several bridges and tunnels. Accordingly the two states, in the interest of the users of such bridges and tunnels and the general public, agreed that the construction, maintenance, operation, and control of all such bridges and tunnels theretofore or thereafter authorized by the states should be unified under the Port Authority, to the end that tolls and other revenues therefrom should be applied so far as practicable to the costs of the construction, maintenance, and operation of said bridges and tunnels as a group and economies in operation effected. The states declared that it was their policy that such bridges and tunnels should as a group be in all respects self-sustaining (Stip., No. 68).

144. That in the legislation referred to in the preceding paragraph the States of New York and New Jersey in furtherance of the aforesaid policy, and in partial effectuation of the comprehensive plan theretofore adopted by the two states for the development of the port of New York district, vested in the Port Authority the control, operation, tolls and other revenues of the Holland Tunnel and authorized and empowered the Port Authority to construct, own, maintain, and operate the Midtown Hudson Tunnel together with such approaches thereto and connections and highways as the Port Authority should deem necessary or desirable. That though the two states vested the control and operation of the Holland Tunnel in the Port Authority as aforesaid, the two states each retained title to the said Holland Tunnel in their own names (Based on Stip., No. 69).

145. That the two states by the legislation referred to in the preceding paragraphs also directed that the Port Authority should, from time to time, make studies, surveys, and investigations to determine the necessity and practicability of additional vehicular bridges and tunnels in the port district, and report to the governors and legislatures of the two states thereon (Based on Stip., No. 69).

189 146. That prior to 1931, the States of New York and New Jersey had, by joint legislation embodied in Chapter 420, Laws of New York, 1930, and Chapter 248, Laws of New Jersey, 1930, authorized and empowered the Port Authority to study and report upon such a vehicular tunnel under the Hudson River between a point in the vicinity of 38th Street in the Borough of Manhattan, City and State of New York, and a point opposite thereto in the State of New Jersey. That the two states, in the same legislation, had appropriated the sum of \$400,000, \$200,000

being appropriated by each state, for defraying the expenses of such preliminary studies (Stip. No. 70).

147. That during the calendar year 1930, the Port Authority undertook studies covering all phases of the preliminary investigation of such a tunnel under the Hudson River between West 38th Street in Manhattan and the Township of Weehawken, in New Jersey, and submitted a report on the results of these investigations to the Governors and Legislatures of the two states. The principal conclusions of these reports may be found in the annual report of The Port of New York Authority to the Governors of the States of New York and New Jersey covering the calendar year 1930 and dated February 20, 1931, at pages 40 and 41 thereof (Stip., No. 71).

148. That by the aforementioned and quoted legislation, embodied in Chapter 4 of the Laws of New Jersey, 1931, and Chapter 47 of the Laws of New York, 1931, the two States authorized and empowered the Port Authority, in partial effectuation of the Comprehensive Plan for the development of the Port of New York, to construct, own, maintain, and operate the Midtown Hudson Tunnel under the Hudson River, together with the necessary approaches thereto (Stip., No. 72).

149. That during the calendar years 1931, 1932, and 1933, the Port Authority continued its studies, plans, and preparations with reference to the Midtown Hudson Tunnel. That such studies and conclusions were fully reported upon by the Port Authority to the Governors of the two states in the annual reports of The Port of New York Authority for the calendar years 1931, 1932, and 1933 (Annual Report for the year 1931, dated February 18, 1932, at pages 39 and 40; Annual Report for the year 1932, dated March 1, 1933, at pages 37 to 39 inclusive; Annual Report for the year 1933, dated March 5, 1934, at pages 42 to 44, inclusive) (Stip., No. 73).

150. That during the year 1934, the Port Authority, in accordance with the aforesaid directions of the two states, commenced construction of the Midtown Hudson Tunnel. That the Port Authority is now engaged in the construction of said tunnel and that it is planned that the work of construction will be completed and that the tunnel will be opened for traffic during the year 1938 (Stip., No. 74).

151. That the estimated cost of the first operating unit of the Midtown Hudson Tunnel, which consists of the southerly tube, is in excess of \$37,500,000 and that this cost was being financed by a loan to the Port Authority by the United States of America, as is more fully recited hereinafter in this stipulation (Stip., No. 75).

152. That the Port Authority goes forward with the construction, maintenance, and operation of all of its facilities on a self-liquidating basis. That it is the policy of the Port Authority to operate all of these facilities at the lowest possible tolls or charges consistent with the protection of its bondholders, as required by the statutes. That the Port Authority does not attempt to make a profit; but merely aims to pay its maintenance, operation, interest, and amortization

charges. That in the handling of requests for the reduction of tolls, which are received from time to time, the Port Authority makes studies, analyses its traffic, its revenues, its operating expenses, and its debt charges, for the purpose of seeing whether it is possible to make any reductions and still continue on a self-liquidating basis. That at the present time the revenues of the Port Authority are just sufficient to meet its maintenance and operation costs, its interest, and its amortization charges (Tr., p. 525).

153. The projects of the Port Authority have been financed in part by outright appropriations of the States of New York and New Jersey; in part by direct advances of the States of New York and New Jersey, as against which the revenues of the projects are to be paid over to the states at the times and in the amounts specified in the statutes applicable thereto; and in part by bond issues of The Port of New York Authority.

192 As of November 30, 1935 (adjusted to give effect to the sale on December 11, 1935, of \$16,500,000 General and Refunding Bonds, and to give effect to the cancellation on December 30, 1935, of \$14,800,000 of Midtown Hudson Tunnel Notes) the Port Authority's funded debt was as follows:

New York-New Jersey Interstate Bridge Bonds, Series A (Arthur Kill Bridge Construction). Outstanding—\$12,200,000; of which the Port Authority has acquired and pledged \$5,643,000;

New York-New Jersey Interstate Bridge Bonds, Series B 4's, B 4½'s (George Washington Bridge Construction). Outstanding—\$48,420,000; acquired by the Port Authority and pledged \$1,580,000;

New York-New Jersey Interstate Bridge Bonds, Series C (Bayonne Bridge Construction). Outstanding—\$8,861,000; acquired by the Port Authority and pledged \$3,139,000;

New York-New Jersey Terminal Bonds, Series D (Inland Terminal Construction). Outstanding—\$14,820,000; acquired by the Port Authority and pledged \$1,180,000;

New York-New Jersey Interstate Tunnel Bonds, Series E (Holland Tunnel). Outstanding—\$46,008,000; acquired by the Port Authority and pledged \$992,000;

General and Refunding Bonds, First Series 4%, Due 1975 (Refunding and Midtown Hudson Tunnel Construction). Outstanding—\$45,331,000;

General and Refunding Bonds, Second Series, 3¾%, due 1965 (Midtown Hudson Tunnel Construction). Outstanding (as of December 11, 1935), \$16,500,000;

193 Series F Bonds (George Washington Bridge). Outstanding—\$2,500,000.

Prior to 1931, the Port Authority had issued its A, B, and C Bonds for bridge construction. Each issue is secured by a first lien upon revenues of the particular project, but in each case the lien is suspended as to current revenues when an amount equal to 20% of the issue is accumulated in sinking or special reserve funds, over and above current interest and maturities. The two States have

advanced moneys in aid of the bridges as follows: Arthur Kill Bridges: Construction—\$4,000,000, Preliminary Studies—\$200,000; Bayonne Bridge: Construction—\$4,000,000, Preliminary Studies—\$100,000; George Washington Bridge: Construction—\$9,500,000, Preliminary Studies—\$300,000; except for New Jersey's advance (\$4,500,000) in aid of the George Washington Bridge which was recently liquidated by the issue of Series F Bonds, the Bridge Financing Acts (see Port Authority Statute Book, Exhibit E, pp. 100, 130, 147, 168, 177, 187) require the repayment of the foregoing advances out of bridge revenues, in the amounts and at dates specified in the statutes, but this requirement is subject to the prior liens of the bridge bonds.

In 1931 the two states agreed that bridges and tunnels crossing interstate waters in the Port District, should be unified under the Port Authority (Chapter 47, Laws of New York, 1931; Chapter 4, Laws of New Jersey, 1931), and further agreed that surplus revenues from various Port Authority projects should be pooled in a 194 General Reserve Fund to support various Port Authority securities (Chapter 48, Laws of New York, 1931; Chapter 5, Laws of New Jersey, 1931). At the same time, the States vested the Port Authority with the control and operation of the Holland Tunnel.

The bonds of the Port Authority have been issued or contracted to be issued to the general public, as exempt from Federal and State taxation, based upon the opinion of Counsel that they were so exempt. Respondent denies that the bonds of the Port Authority are exempt from Federal taxation.

The same year, the Port Authority issued its Series D and E Bonds (secured respectively by the revenues of the Holland Tunnel and Port Authority Inland Terminal No. 1), and pledged its General Reserve Fund as security for all of its outstanding issues, including the prior bridge issues.

In 1933, the Port Authority entered into an agreement with the United States (acting through the Federal Emergency Administration of Public Works) for the financing of the first operating unit of the Midtown Hudson Tunnel. Pursuant to this agreement, \$2,500,000 of Midtown Hudson Tunnel Notes were issued to refund prior bank loans for tunnel purposes, and the Government purchased installments of Midtown Hudson Tunnel Notes aggregating \$12,300,000.

In 1935 the Port Authority adopted a program for the refunding of its then outstanding obligations aggregating \$152,000,000 (Series A to E, inclusive, and Midtown Hudson Tunnel Notes) 195 through the medium of its General and Refunding Bonds,

which are supported by a pledge of its General Reserve Fund and (subject to prior liens and to the repayment of State advances) by a pledge of revenues of projects now in operation or under construction. In addition, all bonds acquired pursuant to the refunding program with the proceeds of General and Refunding Bonds are

pledged as collateral security for General and Refunding Bonds. Each issue of bonds so pledged is to be fully retired and cancelled when the entire issue has been acquired, except that no bridge issue is to be fully retired and cancelled until the advances made by the State for the particular project have been liquidated or amortized.

Pursuant to its refunding program, the Port Authority has refunded the bonds shown above as acquired for retirement. It has also refunded and fully retired and cancelled the entire issue of Midtown Hudson Tunnel Notes. Negotiations are now being carried on with the Federal Emergency Administration of Public Works looking to the cancellation of the existing Loan Agreement, and the making of an outright grant in aid of the construction of the Midtown Hudson Tunnel not to exceed \$4,780,000 (Stip., No. 76).

154. That the distribution of Port Authority revenues as of November 1, 1935, is accurately shown upon Exhibit K attached to the Stipulation. Any excess revenues of the Port Authority are expendable for such purposes as may be directed by the two States (Based on Stip., No. 76 at p. 29).

155. That the agreement between the United States of America and the Port Authority (Exhibit L attached to the Stipulation) for the financing of the first operating unit of the Midtown Hudson Tunnel contains a provision that the Government should be furnished with opinions of the Port Authority's General Counsel and of the Government's own Bond Counsel to the effect that the Midtown Hudson Tunnel Notes were "exempt, under the Constitution of the United States as now in force, from any and all taxation (except estate, inheritance and gift taxes), now or hereafter imposed by the United States of America or by the States of New York or New Jersey," and that the Government should be under no obligation to purchase any of the Notes unless it was satisfied on that point. Such opinions were furnished and the aforesaid Midtown Hudson Tunnel notes were accepted by the Government partly on the basis thereof (Based on Stip., No. 76 at p. 29).

156. That the Port Authority has conducted extensive studies into the system of transportation, highway and terminal facilities of the Port District and into methods of handling freight by the various railways, ferry companies and other transportation agencies, and over the highway systems of both States entering said District, and into methods of remedying street, highway, and waterway congestion in connection with the existing and contemplated transportation, highway and terminal facilities, and in accordance with such studies, the Port Authority has sought means of improving such systems and methods of freight handling and transportation facilities. The foregoing studies have been conducted in accordance with the provisions of the Compact of April 30, 1921, and of the Comprehensive Plan (Stip., No. 79; see also Tr., pp. 380 to 384).

157. That the Commissioners of the Port Authority, in their annual reports, fully apprised the Legislatures and Governors of both

the States of New York and New Jersey of the steps being taken, to remedy such conditions by means of an integrated and coordinated system of Union Inland Freight Terminals at strategic points in the Port District and that the Governors and Legislatures of both states have assisted The Port of New York Authority in its studies in connection with this problem by state appropriations and by legislation which has empowered the Port Authority to construct such terminals on a self-liquidating basis as integral parts of the Comprehensive Plan (Based on Stip., No. 80).

158. The location and character of "Inland Terminal No. 1" was determined by the Port Authority after exhaustive research and studies and after a public hearing for the purpose of "adducing what facts, data, information, and opinions will be of aid in determining location, system, and character" of such a terminal building (Stip., No. 81; see also Tr., pp. 380 to 389).

159. That such public hearing was attended by representatives of municipalities, railroads, shippers, consignees, warehouse men, civic and trade associations, property owners, and others, and that the opinions of all persons interested in the location and character of such a terminal were canvassed and secured by the Port Authority prior to its determination as to the location and character of Inland Terminal No. 1 (Stip., No. 82).

160. That the Commissioners of the Port Authority, in their annual reports, fully apprised the Legislatures and Governors of both the States of New York and New Jersey of the character and location of the Inland Terminal No. 1 prior to the construction thereof by the Port Authority (Stip., No. 83).

161. That the resolutions of the Port Authority authorizing and approving the construction of Inland Terminal No. 1, including the utilization of the upper floors thereof for office, loft, and manufacturing purposes, were approved and ratified by the Governors of the States of New York and New Jersey (Stip., No. 84).

162. That the acts of the Port Authority in constructing the Inland Terminal No. 1, as it exists today, were approved and ratified by the Governors and Legislatures of the States of New York and New Jersey (Stip., No. 85).

163. That on or about the 31st day of December, 1930, the Port Authority entered into a written agreement with eight trunkline railroads entering the Port of New York District whereby the Port authority agreed to erect an Inland Terminal Building and to lease substantially all of the Street and basement floors of said building to said trunkline railroads for a term of five (5) years with the privilege and option on the part of the railroads to renew said lease for nine successive periods of five (5) years each, for use as an Inland Terminal Station for the transportation, assemblage, and the distribution of less-than-carload freight for each railroad. That the upper floors of said building are constructed in such a manner as to be suitable for rental and occupancy for purposes of manu-

facturing, offices, and other industrial and business uses, and that the entire building is 15 stories in height, covers one city block and is 800 feet in length and 200 feet in width (Based on Stip., No. 86).

164. That pursuant to said agreement of December 31, 1930, substantially all of the street and basement floors of said Inland Terminal Building are now actually leased to and in use by the aforesaid trunkline railroads as an Inland Terminal Station for the transportation, assemblage, and the distribution of less-than-carload freight and that such Inland Terminal Station is commonly known as Inland Terminal No. 1 (Stip., No. 87).

165. That said Inland Terminal Station is not subdivided among the carriers but is a union station (Stip., No. 88).

166. That the construction of Inland Terminal No. 1 has eliminated a large amount of duplication of trucking and traffic congestion and was intended to, and did bring about, a large saving of time and expense to the merchants and consumers of the Port District and is contributing to the progressive development of the Port under the provisions of the Comprehensive Plan (See Port Authority Trial Brief, pp. 43 to 48; see also Transcript, pp. 390 to 396, 400 to 405, 408 to 410, and 418 to 421).

167. That the construction, operation, and maintenance of the upper stories of said Inland Terminal Building was and is vitally and essentially connected with and is a necessary and inseparable part of the construction, operation, and maintenance of the Inland Terminal Station on the ground and basement floors of said building and that the Port Authority in the construction of the entire building acted solely in the public interest and in accordance with the mandate and purposes of the Compact and the Comprehensive Plan (see reference appended to request No. 166).

168. That the addition of said upper floors are merely incidental to the Inland Terminal Station and that without those floors it would have been economically impossible to construct the Inland Terminal Station pursuant to the Compact and the Comprehensive Plan. That the dominant object of the Inland Terminal Building, including the construction of said upper floors was its use for terminal purposes (see reference appended to request No. 166, and particularly Tr., pp. 400 to 405).

169. That it would have been a financial impossibility to establish an Inland Terminal Station in the Borough of Manhattan on a self-supporting and self-liquidating basis without the addition of upper stories to be utilized for revenue producing purposes, and that without the prospect of obtaining revenue through utilization of air-rights by the renting of such upper stories, the Port Authority would have been unable to borrow the funds needed to finance the erection of the Inland Terminal Station; and consequently would have been unable to carry out and effectuate the mandate of the aforesaid Compact and Comprehensive Plan (see reference appended to request No. 166, and particularly Tr., pp. 402 to 405).

170. That the Inland Terminal Building is not and cannot properly be separated into two distinct parts—the terminal operation on the one hand, the upper stories on the other—it is a self-sustaining unit and its revenue producing features are availed of only for the purpose of making possible the performance by the Port Authority of its functions under the Comprehensive Plan (see reference appended to request No. 166).

171. That the number of floors in the Inland Terminal Building was determined on the basis of the amount of revenue that would be required to construct, operate, and maintain Inland Terminal No. 1 on a self-supporting and self-liquidating basis (see Tr., pp. 402 and 403).

172. That prior to the formulation and adoption of the Comprehensive Plan, there were ferry companies operating between New York and New Jersey, and that the facilities constructed by the Port Authority, pursuant to the statutory plan are in competition with those ferries, and have reduced their traffic and their earnings. That the ferry companies so affected were either independent and privately owned companies, or operated by or in connection with railroad companies serving the Port of New York District, and that in either event, those ferry companies were subject to taxation, both federal and state, as private corporations (Stip. Tr., pp. 368 and 369).

173. That during the taxable years in question the Port Authority was engaged in studies, which were embodied in reports and recommendations to the United States Army Engineers and to the Rivers and Harbors Committee of Congress, relative to the necessary channel improvements, establishment of anchorage areas, fixing of pier and bulkhead lines and determination of clearances for overhead bridges and subaqueous tunnels and pipe lines. That these activities were exercised pursuant to and in partial effectuation of the Compact and the Comprehensive Plan (Tr., p. 423).

174. That pursuant to the powers vested in the Port Authority by the compact to make suitable rules and regulations for the improvement of the conduct of navigation and commerce (Stip., No. 95a); the Port Authority has been active in such harbor matters. That in 1933, pursuant to its power to hold investigations in connection with the planning and developing of the Port of New York (Stip., No. 95g), the Port Authority held public hearings on the subject of free storage time allowed to freight on steamship piers. Pursuant to this, legislation was introduced in both States to give the Port Authority power to regulate such practices. This legislation has already been passed in New York (Chapter 711, Laws of New York, 1935) and is pending in New Jersey (Tr., pp. 495, 507-510).

175. That at the request of the Cities of New York, Elizabeth, and Newark, and pursuant to the direction in the Comprehensive Plan concerning assistance and advice to municipal officials on port problems, the Port Authority has prepared reports on the feasibility of

establishing foreign trade zones in these municipalities (Tr., pp. 497-9).

176. That pursuant to the provision in the Comprehensive Plan that the Port Authority cooperate with State Highway Commissioners, so that trunk line highways will fit in with the Comprehensive Plan, numerous studies have been made and assistance rendered in this field. Prior to the financing and construction of each of its interstate bridges and tunnels, the Port Authority made elaborate studies of the origin and destination, as well as the volume of traffic flow as a guide to determining the need for connecting highways. This information is brought up to date periodically and made available to the United States Bureau of Public Roads and the State Highway Departments of New York and New Jersey, and other public officials whose duties involve the planning of arterial highways and the allotment of funds for their construction. In the engineering and financial aspects of linking up the interstate bridge and tunnel
204 plazas and connecting highways, the Port Authority dovetails its plans with those of the State highway officials and assumes a substantial share of the expense (see Port Authority Trial Brief, p. 39; Tr., pp. 432-6, 440-7, 451, 482-93, and 501-2).

177. That studies and planning have been carried out by the Port Authority in cooperation with federal, state, and municipal officials in connection with the food supply and terminal markets of the Port District. Investigations of terminal market requirements and the cost of handling and marketing foods in the Port District have been conducted in cooperation with the United States Department of Agriculture and other governmental agencies. At the request of a committee of the New Jersey Legislature, expert assistance was given on projects for terminal market improvements for Northern New Jersey. Assistance was rendered to the City of New York in its plans for relief of terminal market congestion. Detailed recommendations were made to the railroads and to the Federal Coordinator of Transportation in respect to coordination of railroad produce terminals (see Port Authority Trial Brief, p. 39).

178. That pursuant to the direction of the Compact (Article XIII) and in partial effectuation of the Comprehensive Plan, the Port Authority takes a leading part in contesting discriminatory inland or ocean rates and eliminating other barriers to the free flow of
205 commerce, in order to protect the Port of New York against the diversion of traffic due to inequitable freight rates (see Port Authority Trial Brief, p. 40; Tr., p. 429).

179. That the Port Authority, in partial effectuation of the Comprehensive Plan and in accordance with its supervisory powers over the Port of New York, gathers data and conducts negotiations with the Customs officials, both in Washington and abroad, in respect to the clarification of requirements for transit of goods in bond and the adjustment of trade barriers through reciprocal trade agreements. That the Port Authority, in Washington in 1929 and in London in 1933, was called upon to take the lead in straightening out the con-

fusion concerning the interpretation of Customs regulations with regard to the movement of millions of bushels of Canadian grain in transit through the United States (see Port Authority Trial Brief, p. 40).

180. That pursuant to the direction of the Comprehensive Plan that terminal operations in the Port District should be unified, the Port Authority proceeded to study and recommend to the railroads progressive unification and improvement of their existing facilities wherever practicable. That in one instance, a thirteen mile stretch of tracks along the New Jersey waterfront between Bayonne and Edgewater was unified after detailed studies by the Port Authority and extensive negotiations with the proprietary carriers, and hearings before the Interstate Commerce Commission, with the result that direct hauls of thirteen miles replaced circuitous hauls of over a hundred miles. That these unifications have brought about great savings to shippers (Tr., pp. 274-9).

181. That other unifications in the Port of New York District have been studied in great detail by the Port Authority, and that pursuant to these studies, and recommendations to the railroads and to the Federal Coordinator of Transportation, substantial progress has been made, particularly in the unification of railroad pier stations. That pursuant to such activities and establishment by the Port Authority of Inland Terminal No. 1, and other factors, seven railroad piers in New York City have been discontinued. This result not only reduces the overhead cost of freight transportation, but also aids in the freeing of waterfront property for steamship operations (Tr., pp. 381, 418, 421).

182. That as a result of studies of the marine operations of the railroads in New York Harbor over a period of years, the Port Authority recommended the pooling of marine equipment for the elimination of waste. As a result of these recommendations the carriers instituted a unified Railroad Marine Service, which succeeded in curtailing waste effort and reducing the expense of these operations (Tr., p. 426).

183. That frequently all harbor operations in the Port of New York are seriously interfered with by fog and ice conditions, which have been so serious during the past winters that on occasions traffic has been brought practically to a standstill. That such delays and stoppages due to ice, fogs, and other weather conditions are a constant menace to the health, life, and safety of the inhabitants of the Port District who are thereby cut off, by the water barriers of the Port, from the sources of their vital foodstuffs, drugs, fuel, and other necessities of life. That the work of the two States and of the Port Authority in providing the first vehicular interstate crossings between New Jersey and Manhattan has been directed in large measure to the relief of these dangerous conditions and has substantially eliminated those perils (Tr., pp. 473-476; Port Authority Trial Brief, p. 21).

184. That the Port Authority has made a thorough survey of the movement of dangerous cargoes of explosives, gasoline, and combined chemicals, on boats throughout the harbor. That pursuant to the recommendations of the Port Authority the Interstate Commerce Commission, and the Bureau of Steamboat Inspection, have drafted suitable regulations for the better control of this type of traffic, in order to reduce such hazards; and members of the Port Authority have assisted in the framing of those regulations (Tr., p. 497).

185. That the work of the Port Authority in the elimination of waste and congestion has effected great savings to the shippers and consuming public of the Port District and has substantially lowered the cost of living and increased the material prosperity in the said District (Tr., pp. 408-410, 427-430, 480-1, and 493-4).

208 Before United States Board of Tax Appeals

Docket No. 75816

Docket No. 77375

Docket No. 77376

Docket No. 77377

209

Docket No. 80769

[Titles omitted.]

Petitioners' motion in opposition to motion for a reconsideration.

Now come the petitioners by their attorney, Julius Henry Cohen, General Counsel of The Port of New York Authority, and move in opposition to, and for the denial of the motion of the respondent, filed November 27, 1936, which requests that the Board reconsider its opinion and decision heretofore rendered herein, and vacate said opinion and decision. In praying the denial of the respondent's motion the petitioners show:

1. The paragraph numbered (1) of respondent's motion makes it clear that the entire motion for a reconsideration is conditioned upon the granting of the motion made by the respondent under date of November 20, 1936, requesting the Board to make new Findings of Fact.

In the petitioners' papers submitted in opposition to that motion, we have set forth our reasons for its complete denial.

Since this motion for reconsideration is submitted by the respondent "upon the basis of said amendment and specific Findings of Fact requested by respondent," we might rest our opposition entirely upon the reasons set forth in opposition to the respondent's motion to amend the Findings. Very clearly if that motion is

210 denied, as we believe it must be, the present motion for reconsideration cannot be entertained.

2. Moreover, no new arguments whatsoever are suggested to the Board in the present motion for a reconsideration. In view of the time that was taken in the presentation of this case, the exhaustive stipulation of facts, exhibits, oral testimony, arguments, briefs, and reply briefs with which this Board has been burdened, it would seem inevitable that no new arguments could be presented. Indeed, it was the position of the representatives of the Bureau of Internal Revenue, during the trial, that the issues raised by the Bureau had not, therefore, been thoroughly presented to the Board, but that now all of the "new" arguments were completely presented and before the Board.

We will content ourselves therefore, simply with references to the briefs and other documents heretofore submitted and to the opinion of the Board, wherein may be found all of the contentions upon which this motion for a reconsideration is advanced.

3. In the paragraph numbered (3) of its motion, the respondent states that the conclusion of this Board that:

"The Port Authority is organized for and operating in the sovereign function of protecting, improving, and developing the Port of New York, and all of its activities are directed to and are incident to that end"

is a "pure assumption."

211 After all that has been submitted to this Board, and the opportunities that have been given to the representatives of the respondent to present everything they could present, such a statement is incomprehensible. Is it necessary to begin all over again—in order to make clear to the Bureau of Internal Revenue what is very clear to this Board, to the Legislatures of the two States, and to every court, Federal and State, which has considered it during the past fifteen years? We refer briefly only to the Stipulation of Facts, paragraph 95 (q), which reads:

"The Port Authority is authorized and directed by the two States to proceed with the development of the Port of New York in accordance with the Comprehensive Plan as rapidly as may be economically practicable, and is vested with all necessary and appropriate powers not inconsistent with the Constitution of the United States or of either State to effectuate the same, except the power to levy taxes and assessments."

See also Stipulation, paragraphs 3, 5, 6, 25, 26, 27, 28, 29, 95 (a), 95 (f), 95 (g), 95 (h), 95 (m), 95 (n), and 95 (o). See also petitioners' Trial Brief, pages 5 to 48.

We confess that we do not understand the attempted distinction of *Commissioner v. Ten Eyck*, 76 F. (2d) 515, put forward in the same paragraph of the respondent's motion for reconsideration. "If the Bureau means that the Circuit Court held the Albany Port District

212 Commission to be immune because it carried on "traditional supervision exercised by governments over seaports" and that that traditional supervision was limited to passive observance and the remote supervision of the development of the seaport Albany—then we can only say that no one who had read the Ten Eyck case could make such a contention.

The contention at the conclusion of the paragraph numbered (3) of the respondent's motion for reconsideration to the effect that the supervision of seaports is exclusively committed to the Federal Government and not to the States, was completely answered by us in petitioners' Trial Brief, pages 107, et seq., and pages 128 to 132, inclusive. See also petitioners' Reply Brief, page 12.

In the paragraph of the respondent's motion for reconsideration numbered (4), the Bureau of Internal Revenue expresses the view that the Board misapprehended its principal contentions. We submit, however, that the Bureau's attempted distinction between the Board's statement of its argument, and that same argument as now restated by the Bureau, shows that one is identically the same as the other, and shows clearly also that the Board understood the argument well enough but declined to accept it as sound. The present contention of the Bureau merely indicates that the clear reasoning of the Board, supporting our contentions, is not yet convincing to the Bureau.

As a matter of fact, on the argument of the case, the representative of the Bureau advanced the argument in almost the same language used by the Board in its opinion. The language of the Board is that:

213 "the argument is pressed that the immunity is lost when the activity of the state is one involving interstate commerce or navigation."

The Bureau says that it never made that argument, yet at page 639 of the record, Mr. Uriel said:

"* * * these instrumentalities are instrumentalities of interstate commerce, and are, therefore, not exempt from Federal Income Tax,"

and on page 658 of the record, he said that:

"* * * where an agency of a state * * * goes into the field of interstate commerce * * *"

it loses its governmental immunity from taxation.

At all events, the opinion of the Board on this point completely answers the contention advanced by the Government.

It should be noted that on pages 10 and 11 of the petitioners' Reply Brief this argument of the Government is phrased in almost the precise language of their "corrected contention."

Wherefore, the petitioners pray that the motion of the respondent filed November 27, 1936, be denied.

JULIUS HENRY COHEN,
Counsel for Petitioner.

Of Counsel:

WILBUR LA ROE, JR.,
AUSTIN J. TOBIN.

214 Before United States Board of Tax Appeals

Docket No. 75816

Docket No. 77375

Docket No. 77376

Docket No. 77377

215 Docket No. 80769

[Titles omitted.]

Order denying motion to amend findings

Consideration has been given to respondent's motion filed November 20, 1936, and petitioners' opposition, filed December 22, 1936. The motion is long and, although it has been considered in detail, specific reference to its many items is unnecessary. In substance all the material facts requested (as distinguished from legal inferences and quotations from public statutes) have been found and are set forth in the report as succinctly as consistent with a full basis for a proper decision of the issue. The motion is in error in stating that any of the evidence has been ignored. In so far as the motion sets forth variances between the form in which findings were requested and the form in which the findings have been made, it has been considered in a zealous effort to see whether any substantial fact has been omitted. No such omission appears, and it is not to be expected, therefore, that the form should be modified. Many of the facts referred to in the motion, if not all, are not in dispute and appear only in the stipulation, and it may be doubted whether the Board should be required to restate them in any particular form of compendium. This is clearly so in respect of the provisions of the Compact, which is public law, referred to throughout the motion.

The motion is denied.

Dated, December 23, 1936.

(Signed) JOHN M. STERNHAGEN,
Member.

216 Before United States Board of Tax Appeals

Docket No. 75816

Docket No. 77375

Docket No. 77376

Docket No. 77377

217

Docket No. 80769

[Titles omitted.]

Order denying motion for reconsideration

In the respondent's "motion for reconsideration," filed November 27, 1936, to which the petitioners filed opposition on December 22, 1936, there is nothing which has not heretofore been fully submitted to the Board and considered by it in reaching its decision. Although the Board's opinion was deliberately made brief, it nevertheless disposes of all of the arguments presented in either the original submission or the present motion.

The motion is denied.

Dated, December 23, 1936.

(Signed) JOHN M. STERNHAGEN,
Member.

218. In United States Circuit Court of Appeals for the Second Circuit

B. T. A. Docket No. 77375

[Title omitted.]

Petition for review and assignments of error

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Robert H. Jackson, Assistant Attorney General, Morrison Shafroth, Chief Counsel, Bureau of Internal Revenue, and George D. Brabson, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I

Your petitioner on review, hereinafter referred to as the Commissioner, is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States. Your respondent on

219 review hereinafter referred to as the taxpayer, is an individual and an inhabitant of the City of Brooklyn, State of New York, and filed his income tax return for the year in question with the Collector of Internal Revenue for the First District of New York, whose office is located in the City of Brooklyn, New York, and within the judicial circuit of the United States Circuit Court of Appeals for the Second Circuit.

II

The Commissioner determined a deficiency in Federal income taxes against the taxpayer for the calendar year 1933 in the amount of \$232.74, and on July 31, 1934, in accordance with the provisions of Section 272 of the Revenue Act of 1932, sent to the taxpayer by registered mail a notice of said deficiency. Thereafter, on September 19, 1934, the taxpayer filed an appeal from said notice of deficiency to the United States Board of Tax Appeals, being Docket No. 77375. Said appeal was consolidated for hearing and decision with the appeals of four other taxpayers whose appeals were presented simultaneously to the Board.

On October 28, 1936, the Board of Tax Appeals promulgated its opinion, and on October 31, 1936, entered its final order and decision in said appeal wherein and whereby the Board of Tax Appeals ordered and decided that there was no deficiency in tax against the taxpayer for said year. The opinion of the Board of Tax Appeals is reported at 34 B. T. A. No. 187.

220 On November 20, 1936, the Commissioner filed a Motion for Amended and Specific Findings of Fact setting forth in detail and in particular wherein the Board of Tax Appeals had failed to make correct and adequate findings of material facts based upon the Stipulation of Facts and upon other evidence of record. On November 27, 1936, the Commissioner filed a Motion for Reconsideration of the cases based upon said Amended and Specific Findings of Fact. Both of said motions of the Commissioner were denied by the Board on December 23, 1936.

The nature of the controversy is as follows:

III

Taxpayer is an individual, an industrial consultant by profession, and during the year in question was employed by the Port of New York Authority in connection with the operation and rental of the Commerce Building and Inland Terminal No. 1. For his services as such, taxpayer received during the year in question a compensation of \$8,137.50 which was paid out of the operating revenues of the Port Authority.

The Port of New York Authority is a corporate body organized pursuant to a Compact entered into between the States of New York and New Jersey. The Port Authority was designed and intended

under the terms of said Compact to bring about "a better coordination of the terminal, transportation, and other facilities of commerce in and about the Port of New York." It was given power and
 221 authority "to purchase, construct, lease, and/or operate any terminal or transportation facility within said district and to make charges for the use thereof," and for such purposes only to own, lease, and operate real or personal property, or borrow money and secure same by bonds or mortgages on said property.

The Compact provided that the powers granted by it to the Port Authority should not be exercised until the Legislature of the two States should approve a Comprehensive Plan for the general development of the Port. The Comprehensive Plan as later adopted by the two States was not the agenda or program of the Port Authority alone, but all of the municipalities within the Port District were also authorized and empowered to cooperate and carry out and effectuate the Comprehensive Plan. The Comprehensive Plan provided a general scheme or plan for the development of the Port Authority and laid down nine "Principles to Govern the Development." The Comprehensive Plan expressly and specifically set forth that "the bridges, tunnels, and belt lines forming the Comprehensive Plan" should be as outlined therein. The physical projects outlined therein which comprised the Comprehensive Plan were largely, if not exclusively, railroad, transportation, or terminal facilities, and had nothing directly to do with the harbor, channel, or seaport of the City of New York. All of the nine "Principles to Govern the Development" have to do with terminal, transportation, and railroad facilities solely.

Under the Compact therefore, and under the Comprehensive
 222 Plan, it is clear that the Port Authority was created as the solution for the complex railroad, terminal, and transportation problems in and around New York City, and that the Powers given to the Port Authority were largely in connection with and related to such railroad, terminal, and transportation problems.

In subsequent years the Port Authority was given authority by the Legislatures of the two States to undertake certain other and additional projects. These additional projects were largely in connection with the furnishing of rapid transit facilities for the City of New York. In 1924 Acts were passed authorizing the Port Authority to construct and operate the two bridges between the States of New Jersey and New York now known as the Outerbridge Crossing and the Goethals Bridge. In 1925 the Legislatures of the two States authorized the Port Authority to construct and operate the George Washington Bridge across the Hudson River between Fort Lee, New Jersey, and Manhattan Island, New York. In 1925 the Legislatures of the two States authorized the Port Authority to construct and operate the Bayonne Bridge between Bayonne, New Jersey, and Staten Island, New York. All of said four bridges were financed in part by advances from the two States which have since been repaid and in part from the proceeds of bonds issued by

the Port Authority. All of said bridges were constructed by the Port Authority, and during the years in question were operated by it, charging the public a toll upon each vehicle or each person using said facilities.

In addition to the foregoing facilities, the Port Authority was authorized by the Legislatures of the two States in 1931 to take over the operation of the Holland Tunnel. This tunnel was constructed by a commission from each of the two States through direct appropriations of the State of New York and through a bond issue of the State of New Jersey. Upon taking over the Holland Tunnel in 1931, the Port Authority assumed all of the cost thereof and issued bonds with the proceeds of which the cost to each State was refunded. The Port Authority charges tolls to the general public for the use of said tunnel.

In actual practice these four bridges and tunnel above referred to are operated as rapid transit facilities for the transportation of packaged freight and commuters into New York City. More than 80% of the vehicles using the Port Authority facilities are passenger automobiles and buses. In addition thereto the Port Authority put into operation during the years in question a bus line known as the Goethals Bridge Bus Line exclusively for the use of passengers.

All of the various transportation and terminal facilities of the Port Authority are by statute made subject to the jurisdiction and regulation of the public service, public utility, and like State Commissions of the States of New York and New Jersey to the same extent as those of a private corporation. The rates and charges and the amount of tolls charged by the Port Authority are subject to regulation by said public utility commissions.

In 1930 the Legislatures of the two States authorized the Port Authority to construct and operate a second tunnel under the Hudson River between Weehawken, New Jersey, and Manhattan, New York, known as the Midtown Tunnel. This tunnel was in process of construction during the years in question and was financed by a loan from the Federal Public Works Administration to the Port Authority.

As the keystone of its objective to coordinate and simplify the transportation and terminal facilities in the Port District, the Port Authority has made certain plans to connect existing railroads and terminals by a series of belt lines running through tunnels and other proposed connections. In furtherance of the plan the Port Authority investigated the possibility of an automatic underground electric system but abandoned it in favor of a system of inland terminals served by motor vehicles.

In 1931 the Port Authority acquired certain real estate on Manhattan by condemnation, and erected thereon a large office, loft, and warehouse building known as the "Commerce Building and Inland Terminal No. 1." Under a contract with eight trunk line railroads, the first floor and basement of the building was leased for use as a joint inland terminal for packaged freight. The remainder of the

building is leased by the Port Authority to the general public for manufacturing, loft, and mercantile purposes. The inland terminal portion of the building was designed to simplify and coordinate the complex terminal facilities of the several railroads entering the Port District and to relieve harbor and street congestion in and around the City of New York.

225 The Port Authority has never participated in any maritime or seaport activities and neither owns nor operates any marine or seaport facilities. It neither owns nor operates any dredges, tugs, ferries, ships, boats, piers, or other marine facilities. It has never dredged, deepened, or widened any channels, waterways, or seaport facilities of any kind. It has never established nor attempted to operate nor regulate any of the seaport facilities in the Port District. It has never established nor operated any buoys, lights, bells, whistles, or channel markers of any sort in connection with the harbor or channel of the Port District. It has never spent any substantial sum on any such marine or seaport facilities. In short, the Port Authority is not a seaport authority at all but a body owning and operating railroad terminals and land transportation facilities only.

In addition to construction and operation of its several transportation and terminal facilities, the Port Authority has certain advisory and supervisory functions. It has conducted studies to improve general transportation conditions in the Port District, to reduce living costs, and to enable the Port of New York to meet competition of other ports. It has made studies and surveys in connection with piers and docks in connection with channel widening and deepening and in connection with railroad marine activities. It has studied the problem of harbor congestion and the transportation of explosives and chemicals and has assisted the Federal Government in making regulations therefor. It has made studies of pier terminals

226 and suggested regulations for the storage of freight therein to relieve the congestion in such terminals. It has prepared reports on the location of free ports or tariff zones, and gratuitously cooperates with and advises the municipalities of the Port District as to their problems of port development.

The Port Authority has participated and given evidence in actions before the Interstate Commerce Commission brought by competitive ports to obtain more favorable rates. It coordinates and assists in litigation affecting commerce, but does not supplant the functions of the several municipalities, the States, and such agencies as Chambers of Commerce, Produce Exchange, and Maritime Exchange of the Port District.

The revenues of the Port Authority are derived primarily from tolls which it charges the public for the use of its various transportation and terminal facilities and from the rentals of the Commerce Building, and secondarily from rentals of other real estate.

interest on securities owned by it, interest on bank balances, bus line fares, and state advances which, however, ceased in 1934.

Based upon the foregoing facts the Commissioner determined that the construction and operation of such railroad, terminal, and transportation facilities by the Port Authority was not the exercise of Governmental functions of the States of New York and New Jersey, and hence determined that the compensation of each of the taxpayers was subject to Federal income taxation.

In the proceeding before the Board the taxpayers contended 227 that they were officers and employees of the Port of New York Authority, that the Port Authority was an agency of the States of New York and New Jersey, that the several bridges, tunnels, and terminal facilities and Commerce Building were erected and operated in the public interest and because of the necessity of relieving the Port District of street, highway, and harbor congestion, and hence that the erection and operation of said facilities was an exercise of the Governmental functions of the two States, and that the taxpayers' compensation paid by the Port Authority was exempt under the Constitution from Federal income taxation.

The Commissioner contended:

1. That the various activities of the Port Authority are all instrumentalities of Interstate Commerce and they are not immune from Federal income taxation because Congress has supreme and plenary power of such instrumentalities.
2. The various activities of the Port Authority consisted principally, if not entirely, in the furnishing of railroad and rapid transit facilities to the public for hire, and hence its employees are not immune from Federal income taxation because the furnishing of means of transportation and rapid transit facilities is not a Governmental function.
3. The Port Authority has numerous facilities, and the immune character of each facility from the operation of which the 228 compensation of the taxpayers was derived must be separately proven by the taxpayers.
4. The Port Authority is a self-sustaining, self-perpetuating body, not dependent upon the States or their citizens for its support. Federal income tax levied upon the compensation paid to its employees being a nondiscriminatory tax in its nature would impose no burden upon either State, and, hence the compensation of such employees is not exempt from Federal income taxation.
5. Taxpayers' claim of immunity from Federal income taxation places in issue the constitutionality of the Revenue Acts and puts the burden upon the taxpayers of proving their unconstitutionality.

The Board held that it was bound by its prior decisions in the cases of Leon Moisseiff, 21 B. T. A. 515 and Robert Carey, 31 B. T. A. 839, and therefore decided the cases in favor of the taxpayers.

IV

The Commissioner says that in the record and proceedings before the Board of Tax Appeals and in the decision and final order of redetermination entered by the Board manifest error occurred and intervened to the prejudice of the Commissioner, and the Commissioner hereby assigns the following errors which he avers occurred in said record, proceedings, decision and final order, of redetermination so entered by the Board, to wit:

229 1. The Board erred in holding that the compensation received by these taxpayers for services rendered during the years in question as employees of the Port of New York Authority was exempt from Federal income taxation.

2. The Board erred in holding that the Port Authority was organized for and operated in the traditionally sovereign function of protecting, improving, and developing the Port of New York.

3. The Board erred in failing to hold that the sovereign function of protecting, improving, and developing seaports is committed by the Constitution to Congress and the Federal Government.

4. The Board erred in holding that the functions exercised by the Port of New York Authority during the years in question were Governmental functions of the States of New York and New Jersey.

5. The Board erred in failing to hold that the functions exercised by the Port Authority during said years were primarily in connection with the furnishing of railroad, terminal, and transportation facilities, and, hence, in the nature of private business.

6. The Board erred in holding that the building and operation of the several facilities of the Port Authority during the years in question constitute the exercise of Governmental or sovereign functions of the States of New York and New Jersey.

230 7. The Board erred in failing to hold that the building and operation of the several facilities of the Port Authority during the years in question constitute the exercise of the corporate or proprietary functions of the two States.

8. The Board erred in holding that the construction and operation by the Port Authority of its several interstate bridges and tunnels for the transportation of passengers and packaged freight constituted the exercise of the Governmental functions of the two States.

9. The Board erred in failing to hold that the construction and operation by the Port Authority of its several interstate bridges and tunnels for the transportation of passengers and packaged freight constitute public utilities, and, hence, were not the exercise of the Government functions of the two States.

10. The Board erred in holding that the construction and operation by the Port Authority of the Commerce Building and Inland Terminal No. 1 during the years in question for the housing of railroad terminals and the renting of loft and manufacturing space to the general public constituted the exercise of Governmental functions of the two States.

11. The Board erred in failing to hold that the construction and operation by the Port Authority of the Commerce Building and Inland Terminal No. 1 as aforesaid constitute a private or corporate undertaking, and, hence, were not the exercise of the Governmental functions of the two States.

12. The Board erred in holding that the construction and operation of its several facilities by the Port Authority during the years in question were part of the sovereign functions of the two States in improving, protecting, and developing the Harbor of New York.

13. The Board erred in failing to hold that the construction and operation of said facilities by the Port Authority were not a part of the "traditional supervision exercised by government over seaports" and, hence, not an exercise of a Governmental function.

14. The Board erred in failing to make findings of fact as to numerous material facts stipulated by the parties and incorporated in the Stipulations of Facts filed with the Board.

15. The Board erred in failing to make findings of fact as to numerous material facts of record, which facts are set forth in detail in the Commissioner's Motion for Amended and Specific Findings of Fact.

16. The Board erred in failing to grant the Commissioner's Motion for Amended and Specific Findings of Fact.

17. The Board erred in failing to grant the Commissioner's Motion for Reconsideration of the cases, based upon said Amended and Specific Findings of Fact.

18. The Board erred in failing to find for the Commissioner upon all the facts of record.

Wherefore, the Commissioner petitions that the decision and final order of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Second Circuit, that a transcript of the record be transmitted to the clerk of said court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by the said court.

(Signed) ROBERT H. JACKSON,
Assistant Attorney General.

(Signed) MORRISON SHAFROTH,
*Chief Counsel,
Bureau of Internal Revenue.*

(Sgd.) GEORGE D. BRABSON,
*Special Attorney,
Bureau of Internal Revenue.*

GDB/MEP 1-15-37.

[Duly sworn to by George D. Brabson; jurat omitted in printing.]

234 In United States Circuit Court of Appeals, for the the Second Circuit

B. T. A. Docket No. 77375

(Title omitted.)

Notice of filing petition for review

To: Mr. PHILIP L. GERHARDT,
111 Eighth Avenue, New York, New York.

Mr. JULIUS HENRY COHEN,
111 Eighth Avenue, New York, New York.

You are hereby notified that the Commissioner of Internal Revenue, did on the 25th day of January 1937, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

Dated this 25th day of January 1937.

(Signed) MORRISON SHAFROTH,
Chief Counsel,
Bureau of Internal Revenue.

235 Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 27th day of January 1937.

PHILIP L. GERHARDT,
Respondent on Review.
JULIUS HENRY COHEN,
Attorney for Respondent on Review.

1-21-37.

236 In United States Circuit Court of Appeals for the Second Circuit

B. T. A. Docket No. 77377

[Title omitted.]

Petition for review and assignments of error

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Robert H. Jackson, Assistant Attorney General, Morrison Shafroth, Chief Counsel, Bureau of Internal Revenue,

and George D. Brabson, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I

Your petitioner on review, hereinafter referred to as the Commissioner, is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States. Your
237 respondent on review, hereinafter referred to as the taxpayer, is an individual and an inhabitant of the City of New York, State of New York, and filed his income tax return for the year in question with the Collector of Internal Revenue for the Third District of New York, whose office is located in the City of New York, New York, and within the judicial circuit of the United States Circuit Court of Appeals for the Second Circuit.

The Commissioner determined a deficiency and penalty in Federal income taxes against the taxpayer for the calendar year 1933 in the amounts of \$733.14 and \$183.29, respectively, and on July 31, 1934, in accordance with the provisions of Section 272 of the Revenue Act of 1932, sent to the taxpayer by registered mail a notice of said deficiency and penalty. Thereafter on September 19, 1934, the taxpayer filed an appeal from said notice of deficiency to the United States Board of Tax Appeals, being Docket No. 77377. Said appeal was consolidated for hearing and decision with the appeals of four other taxpayers whose appeals were presented simultaneously to the Board.

On October 28, 1936, the Board of Tax Appeals promulgated its opinion, and on October 31, 1936, entered its final order and decision in said appeal wherein and whereby the Board of Tax Appeals ordered and decided that there was no deficiency in tax against the taxpayer for said year. The opinion of the Board of Tax Appeals is reported at 34 B. T. A. No. 187.

238 On November 20, 1936, the Commissioner filed a Motion for Amended and Specific Findings of Fact setting forth in detail and in particular wherein the Board of Tax Appeals had failed to make correct and adequate findings of material facts based upon the Stipulation of Facts and upon other evidence of record. On November 27, 1936, the Commissioner filed a Motion for Reconsideration of the cases based upon said Amended and Specific Findings of Fact. Both of said motions of the Commissioner were denied by the Board on December 23, 1936.

III

The nature of the controversy is as follows:

Taxpayer is an individual, and during the year in question was employed by the Port of New York Authority as assistant general manager. For his services as such, taxpayer received during the year in question a compensation of \$14,625.00, paid out of the operating revenues of the Port Authority.

The Port of New York Authority is a corporate body organized pursuant to a Compact entered into between the States of New York and New Jersey. The Port Authority was designed and intended under the terms of said Compact to bring about "a better coordination of the terminal, transportation, and other facilities of commerce in and about the Port of New York." It was given
 239 power and authority "to purchase, construct, lease, and/or operate any terminal or transportation facility within said district and to make charges for the use thereof," and for such purposes only to own, lease, and operate real or personal property, or borrow money and secure same by bonds or mortgages on said property.

The Compact provided that the powers granted by it to the Port Authority should not be exercised until the Legislatures of the two States approve a Comprehensive Plan for the general development of the Port. The Comprehensive Plan as later adopted by the two States was not the agenda or program of the Port Authority alone, but all of the municipalities within the Port District were also authorized and empowered to cooperate and carry out and effectuate the Comprehensive Plan. The Comprehensive Plan provided a general scheme or plan for the development of the Port Authority and laid down nine "Principles to Govern the Development." The Comprehensive plan expressly and specifically set forth that "the bridges, tunnels, and belt lines forming the Comprehensive Plan" should be as outlined therein. The physical projects outlined therein which comprised the Comprehensive Plan were largely, if not exclusively, railroad, transportation or terminal facilities, and had nothing directly to do with the harbor, channel, or seaport of the City of New York. All of the nine "Principles to Govern the Development" have to do with terminal, transportation, and railroad facilities solely.

Under the Compact therefore, and under the Comprehensive
 240 Plan, it is clear that the Port Authority was created as the solution for the complex railroad, terminal, and transportation problems in and around New York City, and that the powers given to the Port Authority were largely in connection with and related to such railroad, terminal, and transportation problems.

In subsequent years the Port Authority was given authority by the Legislatures of the two States to undertake certain other and additional projects. These additional projects were largely in connection with the furnishing of rapid transit facilities for the City of New York. In 1924, Acts were passed authorizing the Port Authority to construct and operate the two bridges between the States of New Jersey and New York now known as the Outerbridge Crossing and the Goethals Bridge. In 1925, the Legislatures of the two States authorized the Port Authority to construct and operate the George Washington Bridge across the Hudson River between Fort Lee, New Jersey, and Manhattan Island, New York. In 1925, the Legislatures of the two States authorized the Port Authority to construct and oper-

ate the Bayonne Bridge between Bayonne, New Jersey, and Staten Island, New York. All of said four bridges were financed in part by advances from the two States which have since been repaid and in part from the proceeds of bonds issued by the Port Authority. All of said bridges were constructed by the Port Authority, and during the years in question were operated by it, charging the public a toll upon each vehicle or each person using said facilities.

241 In addition to the foregoing facilities, the Port Authority was authorized by the Legislatures of the two States in 1931 to take over the operation of the Holland Tunnel. This tunnel was constructed by a commission from each of the two States through direct appropriations of the State of New York and through a bond issue of the State of New Jersey. Upon taking over the Holland Tunnel in 1931, the Port Authority assumed all of the cost thereof and issue bonds with the proceeds of which the cost to each State was refunded. The Port Authority charges tolls to the general public for the use of said tunnel.

In actual practice these four bridges and tunnel above referred to are operated as rapid transit facilities for the transportation of packaged freight and commuters into New York City. More than 80% of the vehicles using the Port Authority facilities are passenger automobiles and buses. In addition thereto the Port Authority put into operation during the years in question a bus line known as the Goethals Bridge Bus Line exclusively for the use of passengers.

All of the various transportation and terminal facilities of the Port Authority are by statute made subject to the jurisdiction and regulation of the public service, public utility, and like State Commissions of the States of New York and New Jersey to the same extent as those of a private corporation. The rates and charges and the amount of tolls charged by the Port Authority are subject to regulation by said public utility commissions.

242 In 1930, the Legislatures of the two States authorized the Port Authority to construct and operate a second tunnel under the Hudson River between Weehawken, New Jersey, and Manhattan, New York, known as the Midtown Tunnel. This tunnel was in process of construction during the years in question and was financed by a loan from the Federal Public Works Administration to the Port Authority.

As the keystone of its objective to coordinate and simplify the transportation and terminal facilities in the Port District, the Port Authority has made certain plans to connect existing railroads and terminals by a series of belt lines running through tunnels and other proposed connections. In furtherance of the plan the Port Authority investigated the possibility of an automatic underground electric system but abandoned it in favor of a system of inland terminals served by motor vehicles.

In 1931 the Port Authority acquired certain real estate on Manhattan by condemnation, and erected thereon a large office, loft, and

warehouse building known as the "Commerce Building and Inland Terminal No. 1." Under a contract with eight trunk line railroads, the first floor and basement of the building was leased for use as a joint inland terminal for packaged freight. The remainder of the building is leased by the Port Authority to the general public for manufacturing, loft, and mercantile purposes. The inland terminal portion of the building was designed to simplify and coordinate the complex terminal facilities of the several railroads entering the Port District and to relieve harbor and street congestion in and around the City of New York.

The Port Authority has never participated in any maritime or seaport activities and neither owns nor operates any marine or seaport facilities. It neither owns nor operates any dredges, tugs, ferries, ships, boats, piers, or other marine facilities. It has never dredged, deepened, or widened any channels, waterways, or seaport facilities of any kind. It has never established nor attempted to operate nor regulate any of the seaport facilities in the Port District. It has never established nor operated any buoys, lights, bells, whistles, or channel markers of any sort in connection with the harbor or channel of the Port District. It has never spent any substantial sum on any such marine or seaport facilities. In short, the Port Authority is not a seaport authority at all but a body owning and operating railroad terminals and land transportation facilities only.

In addition to construction and operation of its several transportation and terminal facilities, the Port Authority has certain advisory and supervisory functions. It has conducted studies to improve general transportation conditions in the Port District, to reduce living costs, and to enable the Port of New York to meet competition of other ports. It has made studies and surveys in connection with piers and docks, in connection with channel widening and deepening and in connection with railroad marine activities.

It has studied the problem of harbor congestion and the transportation of explosives and chemicals and has assisted the Federal Government in making regulations therefor. It has made studies of pier terminals and suggested regulations for the storage of freight therein to relieve the congestion in such terminals. It has prepared reports on the location of free ports or tariff zones, and gratuitously cooperates with and advises the municipalities of the Port District as to their problems of port development.

The Port Authority has participated and given evidence in actions before the Interstate Commerce Commission brought by competitive ports to obtain more favorable rates. It coordinates and assists in litigation affecting commerce, but does not supplant the functions of the several municipalities, the States, and such agencies as Chambers of Commerce, Produce Exchange, and Maritime Exchange of the Port District.

The revenues of the Port Authority are derived primarily from tolls which it charges the public for the use of its various transpor-

tation and terminal facilities and from the rentals of the Commerce Building, and secondarily from rentals of other real estate, interest on securities owned by it, interest on bank balances, bus line fares, and state advances which, however, ceased in 1934.

Based upon the foregoing facts, the Commissioner determined that the construction and operation of such railroad, terminal, and transportation facilities by the port Authority was not the exercise of Governmental functions of the States of New York and
245 New Jersey, and hence determined that the compensation of each of the taxpayers was subject to Federal income taxation.

In the proceeding before the Board the taxpayers contended that they were officers and employees of the Port of New York Authority, that the Port Authority was an agency of the States of New York and New Jersey, that the several bridges, tunnels, and terminal facilities and Commerce Building were erected and operated in the public interest and because of the necessity of relieving the Port District of street, highway, and harbor congestion, and hence that the erection and operation of said facilities was an exercise of the Governmental functions of the two States, and that the taxpayers' compensation paid by the Port Authority was exempt under the Constitution from Federal income taxation.

The Commissioner contended:

1. That the various activities of the Port Authority are all instrumentalities of Interstate Commerce and they are not immune from Federal income taxation because Congress has supreme and plenary power of such instrumentalities.

2. The various activities of the Port Authority consisted principally, if not entirely, in the furnishing of railroad and rapid transit facilities to the public for hire, and hence its employees are not immune from Federal income taxation because the furnishing of means of transportation and rapid transit facilities is not a Governmental function.

246 3. The Port Authority has numerous facilities, and the immune character of each facility from the operation of which the compensation of the taxpayers was derived must be separately proven by the taxpayers.

4. The Port Authority is a self-sustaining, self-perpetuating body, not dependent upon the States or their citizens for its support. Federal income tax levied upon the compensation paid to its employees being a non-discriminatory tax in its nature would impose no burden upon either State, and hence the compensation of such employees is not exempt from Federal income taxation.

5. Taxpayers' claim of immunity from Federal income taxation places in issue the constitutionality of the Revenue Acts and puts the burden upon the taxpayers of proving their unconstitutionality.

The Board held that it was bound by its prior decisions in the cases of Leon Moisseiff, 21 B. T. A. 515 and Robert Carey 31, B. T. A. 839, and therefore decided the cases in favor of the taxpayers.

IV

The Commissioner says that in the record and proceedings before the Board of Tax Appeals and in the decision and final order of redetermination entered by the Board manifest error occurred and intervened to the prejudice of the Commissioner, and the
247 Commissioner hereby assigns the following errors which he avers occurred in said record, proceedings, decision, and final order of redetermination so entered by the Board, to wit:

1. The Board erred in holding that the compensation received by these taxpayers for services rendered during the years in question as employees of the Port of New York Authority was exempt from Federal income taxation.

2. The Board erred in holding that the Port Authority was organized for and operated in the traditionally sovereign function of protecting, improving, and developing the Port of New York.

3. The Board erred in failing to hold that the sovereign function of protecting, improving, and developing seaports is committed by the Constitution to Congress and the Federal Government.

4. The Board erred in holding that the functions exercised by the Port of New York Authority during the years in question were Governmental functions of the States of New York and New Jersey.

5. The Board erred in failing to hold that the functions exercised by the Port Authority during said years were primarily in connection with the furnishing of railroad, terminal, and transportation facilities, and, hence, in the nature of private business.

6. The Board erred in holding that the building and operation of the several facilities of the Port Authority during the
248 years in question constitute the exercise of Governmental or sovereign functions of the States of New York and New Jersey.

7. The Board erred in failing to hold that the building and operation of the several facilities of the Port Authority during the years in question constitute the exercise of the corporate or proprietary functions of the two States.

8. The Board erred in holding that the construction and operation by the Port Authority of its several interstate bridges and tunnels for the transportation of passengers and packaged freight constituted the exercise of the Governmental functions of the two States.

9. The Board erred in failing to hold that the construction and operation by the Port Authority of its several interstate bridges and tunnels for the transportation of passengers and packaged freight constitute public utilities, and, hence, were not the exercise of the Governmental functions of the two States.

10. The Board erred in holding that the construction and operation by the Port Authority of the Commerce Building and Inland Terminal No. 1 during the years in question for the housing of railroad terminals and the renting of loft and manufacturing space to the general public constituted the exercise of Governmental functions of the two States.

249 11. The Board erred in failing to hold that the construction and operation by the Port Authority of the Commerce Building and Inland Terminal No. 1 as aforesaid constitute a private or corporate undertaking, and, hence, were not the exercise of the Governmental functions of the two States.

12. The Board erred in holding that the construction and operation of its several facilities by the Port Authority during the years in question were part of the sovereign functions of the two States in improving, protecting, and developing the Harbor of New York.

13. The Board erred in failing to hold that the construction and operation of said facilities by the Port Authority were not a part of the "traditional supervision exercised by government over seaports" and, hence, not an exercise of a Governmental function.

14. The Board erred in failing to make findings of fact as to numerous material facts stipulated by the parties and incorporated in the Stipulations of Facts filed with the Board.

15. The Board erred in failing to make findings of fact as to numerous material facts of record, which facts are set forth in detail in the Commissioner's Motion for Amended and Specific Findings of Fact.

16. The Board erred in failing to grant the Commissioner's Motion for Amended and Specific Findings of Fact.

250 17. The Board erred in failing to grant the Commissioner's Motion for Reconsideration of the cases, based upon said Amended and Specific Findings of Fact.

18. The Board erred in failing to find for the Commissioner upon all the facts of record.

Wherefore, the Commissioner petitions that the decision and final order of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Second Circuit, that a transcript of the record be transmitted to the clerk of said court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by the said court.

(Signed) ROBERT H. JACKSON,
Robert H. Jackson,
Assistant Attorney General.

(Signed) MORRISON SHAFROTH,
Morrison Shafroth,
Chief Counsel,
Bureau of Internal Revenue.

(Sgd.) GEORGE D. BRABSON,
George D. Brabson,
Special Attorney,
Bureau of Internal Revenue.

GDB/MKP 1-15-37.

251 [Duly sworn to by George D. Brabson; jurat omitted in printing.]

252 United States Circuit Court of Appeals, For the Second Circuit

B. T. A. Docket No. 77377

[Title omitted.]

Notice of filing petition for review

To: Mr. BILLINGS WILSON,
111 Eighth Avenue, New York, New York.

Mr. JULIUS HENRY COHEN,
111 Eighth Avenue, New York, New York.

You are hereby notified that the Commissioner of Internal Revenue did on the 25th day of January 1937, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

Dated this 25th day of January 1937.

(Signed) MORRISON SHAFROTH:
Morrison Shafroth,
Chief Counsel,
Bureau of Internal Revenue.

253 Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 27th day of January 1937.

BILLINGS WILSON,
Respondent on Review.

JULIUS HENRY COHEN,
Attorney for Respondent on Review.

GDE/MKP 1-21-37.

254 In United States Circuit Court of Appeals, for the Second Circuit

B. T. A. Docket No. 80769

[Title omitted.]

Petition for review and assignments of error

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Robert H. Jackson, Assistant Attorney General, Morrison Shafroth, Chief Counsel, Bureau of Internal Revenue, and George D. Brabson, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I

Your petitioner on review, hereinafter referred to as the Commissioner, is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States. Your respondent on
255 review, hereinafter referred to as the taxpayer, is an individual and an inhabitant of the City of New York, State of New York, and filed his income tax return for the year in question with the Collector of Internal Revenue for the Second District of New York, whose office is located in the City of New York, New York, and within the judicial circuit of the United States Circuit Court of Appeals for the Second Circuit.

II

The Commissioner determined a deficiency and penalty in Federal income taxes against the taxpayer for the calendar year 1932 in the amounts of \$695.00 and \$173.75; respectively, and on April 24, 1935, in accordance with the provisions of Section 272 of the Revenue Act of 1932, sent to the taxpayer by registered mail a notice of said deficiency and penalty. Thereafter, on July 15, 1935, the taxpayer filed an appeal from said notice of deficiency to the United States Board of Tax Appeals, being Docket No. 80769. Said appeal was consolidated for hearing and decision with the appeals of four other taxpayers whose appeals were presented simultaneously to the Board.

On October 28, 1936, the Board of Tax Appeals promulgated its opinion, and on October 31, 1936, entered its final order and decision in said appeal wherein and whereby the Board of Tax Appeals ordered and decided that there was no deficiency in tax against the taxpayer for said year. The opinion of the Board of Tax Appeals is reported at 34 B. T. A. No. 187.

256 On November 20, 1936, the Commissioner filed a Motion for Amended and Specific Findings of Fact setting forth in detail and in particular wherein the Board of Tax Appeals had failed to make correct and adequate findings of material facts based upon the Stipulation of Facts and upon other evidence of record. On November 27, 1936, the Commissioner filed a Motion for Reconsideration of the cases based upon said Amended and Specific Findings of Fact. Both of said motions of the Commissioner were denied by the Board on December 23, 1936.

III

The nature of the controversy is as follows:

Taxpayer is an individual, and during the year in question was employed by the Port of New York Authority as assistant general manager. For his services as such, taxpayer received during the year in question a compensation of \$10,950.00 paid out of the operating revenues of the Port Authority.

The Port of New York Authority is a corporate body organized pursuant to a Compact entered into between the States of New York

and New Jersey. The Port Authority was designed and intended under the terms of said Compact to bring about "a better cordination of the terminal, transportation, and other facilities of commerce in and about the Port of New York." It was given power and authority "to purchase, construct, lease, and/or operate any
257 terminal or transportation facility within said district and to make charges for the use thereof," and for such purposes only to own, lease, and operate real or personal property, or borrow money and secure same by bonds or mortgages on said property.

The Compact provided that the powers granted by it to the Port Authority should not be exercised until the Legislatures of the two States should approve a Comprehensive Plan for the general development of the Port. The Comprehensive Plan as later adopted by the two States was not the agenda or program of the Port Authority alone, but all of the municipalities within the Port District were also authorized and empowered to cooperate and carry out and effectuate the Comprehensive Plan. The Comprehensive Plan provided a general scheme or plan for the development of the Port Authority and laid down nine "Principles to Govern the Development." The Comprehensive Plan expressly and specifically set forth that "the bridges, tumpels and belt lines forming the Comprehensive Plan" should be as outlined therein. The physical projects outlined therein which comprised the Comprehensive Plan were largely, if not exclusively, railroad, transportation or terminal facilities, and had nothing directly to do with the harbor, channel, or seaport of the City of New York. All of the nine "Principles to Govern the Development" have to do with terminal, transportation, and railroad facilities solely.

Under the Compact therefore, and under the Comprehensive
258 sive Plan, it is clear that the Port Authority was created as the solution for the complex railroad, terminal, and transportation problems in and around New York City, and that the powers given to the Port Authority were largely in connection with and related to such railroad, terminal, and transportation problems.

In subsequent years the Port Authority was given authority by the Legislature of the two States to undertake certain other and additional projects. These additional projects were largely in connection with the furnishing of rapid transit facilities for the City of New York. In 1924, Acts were passed authorizing the Port Authority to construct and operate the two bridges between the States of New Jersey and New York now known as the Outerbridge Crossing and the Goethals Bridge. In 1925, the Legislatures of the two States authorized the Port Authority to construct and operate the George Washington Bridge across the Hudson River between Fort Lee, New Jersey and Manhattan Island, New York. In 1925, the Legislatures of the two States authorized the Port Authority to construct and operate the Bayonne Bridge between Bayonne, New Jersey and Staten Island, New York. All of said four bridges were financed in part by advances from the two States which have

since been repaid and in part from the proceeds of bonds issued by the Port Authority. All of said bridges were constructed by the Port Authority, and during the years in question were operated by it, charging the public a toll upon each vehicle or each person using said facilities.

259 In addition to the foregoing facilities, the Port Authority was authorized by the Legislature of the two States in 1931 to take over the operation of the Holland Tunnel. This tunnel was constructed by a commission from each of the two States through direct appropriations of the State of New York and through a bond issue of the State of New Jersey. Upon taking over the Holland Tunnel in 1931, the Port Authority assumed all of the cost thereof and issued bonds with the proceeds of which the cost to each State was refunded. The Port Authority charges tolls to the general public for the use of said tunnel.

In actual practice these four bridges and tunnel above referred to are operated as rapid transit facilities for the transportation of packaged freight and commuters into New York City. More than 80% of the vehicles using the Port Authority facilities are passenger automobiles and buses. In addition thereto the Port Authority put into operation during the years in question a bus line known as the Goethals Bridge Bus Line exclusively for the use of passengers.

All of the various transportation and terminal facilities of the Port Authority are by statute made subject to the jurisdiction and regulation of the public service, public utility, and like State Commissions of the States of New York and New Jersey to the same extent as those of a private corporation. The rates and charges and the amount of tolls charged by the Port Authority are subject to regulation by said public utility commissions.

260 In 1930, the Legislatures of the two States authorized the Port Authority to construct and operate a second tunnel under the Hudson River between Weehawken, New Jersey and Manhattan, New York, known as the Midtown Tunnel. This tunnel was in process of construction during the years in question and was financed by a loan from the Federal Public Works Administration to the Port Authority.

As the keystone of its objective to coordinate and simplify the transportation and terminal facilities in the Port District, the Port Authority has made certain plans to connect existing railroads and terminals by a series of belt lines running through tunnels and other proposed connections. In furtherance of the plan the Port Authority investigated the possibility of an automatic underground electric system but abandoned it in favor of a system of inland terminals served by motor vehicles.

In 1931, the Port Authority acquired certain real estate on Manhattan by condemnation, and erected thereon a large office, loft, and warehouse building known as the "Commerce Building and Inland Terminal No. 1." Under a contract with eight trunk line railroads, the first floor and basement of the building was leased for use as a

joint inland terminal for packaged freight. The remainder of the building is leased by the Port Authority to the general public for manufacturing, loft, and mercantile purposes. The inland terminal portion of the building was designed to simplify and coordinate the complex terminal facilities of the several railroads entering the Port District and to relieve harbor and street congestion in and around the City of New York.

The Port Authority has never participated in any maritime or seaport activities and neither owns nor operates any marine or seaport facilities. It neither owns nor operates any dredges, tugs, ferries, ships, boats, piers, or other marine facilities. It has never dredged, deepened, or widened any channels, waterways or seaport facilities of any kind. It has never established nor attempted to operate nor regulate any of the seaport facilities in the Port District. It has never established nor operated any buoys, lights, bells, whistles, or channel markers of any sort in connection with the harbor or channel of the Port District. It has never spent any substantial sum on any such marine or seaport facilities. In short, the Port Authority is not a seaport authority at all but a body owning and operating railroad terminals and land transportation facilities only.

In addition to construction and operation of its several transportation and terminal facilities, the Port Authority has certain advisory and supervisory functions. It has conducted studies to improve general transportation conditions in the Port District, to reduce living costs, and to enable the Port of New York to meet competition of other ports. It has made studies and surveys in connection with piers and docks in connection with channel widening and deepening and in connection with railroad marine activities. It has studied the problem of harbor congestion and the transportation of explosives and chemicals and has assisted the Federal Government in making regulations therefor. It has made studies of pier terminals and suggested regulations for the storage of freight therein to relieve the congestion in such terminals. It has prepared reports on the location of free ports or tariff zones, and gratuitously cooperates with and advises the municipalities of the Port District as to their problems of port development.

The Port Authority has participated and given evidence in actions before the Interstate Commerce Commission brought by competitive ports to obtain more favorable rates. It coordinates and assists in litigation affecting commerce, but does not supplant the functions of the several municipalities, the States, and such agencies as Chambers of Commerce, Produce Exchange, and Maritime Exchange of the Port District.

The revenues of the Port Authority are derived primarily from tolls which it charges the public for the use of its various transportation and terminal facilities and from the rentals of the Com-

merce Building, and secondarily from rentals of other real estate, interest on securities owned by it, interest on bank balances, bus line fares, and state advances which, however, ceased in 1934.

Based upon the foregoing facts the Commissioner determined that the construction and operation of such railroad, terminal, and transportation facilities by the Port Authority was not the exercise of Governmental functions of the States of New York and New Jersey, and hence determined that the compensation of each of the taxpayers was subject to Federal income taxation.

263 In the proceeding before the Board the taxpayers contended that they were officers and employees of the Port of New York Authority, that the Port Authority was an agency of the States of New York and New Jersey, that the several bridges, tunnels, and terminal facilities and Commerce Building were erected and operated in the public interest and because of the necessity of relieving the Port District of street, highway, and harbor congestion, and hence that the erection and operation of said facilities was an exercise of the Governmental functions of the two States, and that the taxpayers' compensation paid by the Port Authority was exempt under the Constitution from Federal income taxation.

The Commissioner contended:

1. That the various activities of the Port Authority are all instrumentalities of Interstate Commerce and they are not immune from Federal income taxation because Congress has supreme and plenary power of such instrumentalities.

2. The various activities of the Port Authority consisted principally, if not entirely, in the furnishing of railroad and rapid transit facilities to the public for hire, and hence its employees are not immune from Federal income taxation because the furnishing of means of transportation and rapid transit facilities is not a Governmental function.

264 3. The Port Authority has numerous facilities, and the immune character of each facility from the operation of which the compensation of the taxpayers was derived must be separately proven by the taxpayers.

4. The Port Authority is a self-sustaining, self-perpetuating body, not dependent upon the States or their citizens for its support. Federal income tax levied upon the compensation paid to its employees being a non-discriminatory tax in its nature would impose no burden upon either State, and hence the compensation of such employees is not exempt from Federal income taxation.

5. Taxpayers' claim of immunity from Federal income taxation places in issue the constitutionality of the Revenue Acts and puts the burden upon the taxpayers of proving their unconstitutionality.

The Board held that it was bound by its prior decisions in the cases of Leon Moisseiff, 21 B. T. A. 515, and Robert Carey, 31 B. T. A. 839, and therefore decided the cases in favor of the taxpayers.

IV

The Commissioner says that in the record and proceedings before the Board of Tax Appeals and in the decision and final order of redetermination entered by the Board manifest error occurred and intervened to the prejudice of the Commissioner and the Commissioner hereby assigns the following errors which he avers occurred in said record, proceedings, decision, and final order of redetermination so entered by the Board, to wit:-

265 1. The Board erred in holding that the compensation received by these taxpayers for services rendered during the years in question as employees of the Port of New York Authority was exempt from Federal income taxation.

2. The Board erred in holding that the Port Authority was organized for and operated in the traditionally sovereign function of protecting, improving and developing the Port of New York.

3. The Board erred in failing to hold that the sovereign function of protecting, improving and developing seaports is committed by the Constitution to Congress and the Federal Government.

4. The Board erred in holding that the functions exercised by the Port of New York Authority during the years in question were Governmental functions of the States of New York and New Jersey.

5. The Board erred in failing to hold that the functions exercised by the Port Authority during said years were primarily in connection with the furnishing of railroad, terminal and transportation facilities, and, hence, in the nature of private business.

6. The Board erred in holding that the building and operation of the several facilities of the Port Authority during the years in question constitute the exercise of Governmental or sovereign functions of the States of New York and New Jersey.

266 7. The Board erred in failing to hold that the building and operation of the several facilities of the Port Authority during the years in question constitute the exercise of the corporate or proprietary functions of the two States.

8. The Board erred in holding that the construction and operation by the Port Authority of its several interstate bridges and tunnels for the transportation of passengers and packaged freight constituted the exercise of the Governmental functions of the two States.

9. The Board erred in failing to hold that the construction and operation by the Port Authority of its several interstate bridges and tunnels for the transportation of passengers and packaged freight constitute public utilities, and, hence, were not the exercise of the Governmental functions of the two States.

10. The Board erred in holding that the construction and operation by the Port Authority of the Commerce Building and Inland Terminal No. 1 during the years in question for the housing of railroad terminals and the renting of loft and manufacturing space to

the general public constituted the exercise of Governmental functions of the two States.

11. The Board erred in failing to hold that the construction and operation by the Port Authority of the Commerce Building and Inland Terminal No. 1 as aforesaid constitute a private or corporate undertaking, and, hence, were not the exercise of the Governmental functions of the two States.

12. The Board erred in holding that the construction and operation of its several facilities by the Port Authority during the years in question were part of the sovereign functions of the two States in improving, protecting, and developing the Harbor of New York.

13. The Board erred in failing to hold that the construction and operation of said facilities by the Port Authority were not a part of the "traditional supervision exercised by government over seaports" and, hence, not an exercise of a Governmental function.

14. The Board erred in failing to make findings of fact as to numerous material facts stipulated by the parties and incorporated in the Stipulations of Facts filed with the Board.

15. The Board erred in failing to make findings of fact as to numerous material facts of record, which facts are set forth in detail in the Commissioner's Motion for Amended and Specific Findings of Fact.

16. The Board erred in failing to grant the Commissioner's Motion for Amended and Specific Findings of Fact.

17. The Board erred in failing to grant the Commissioner's Motion for Reconsideration of the cases, based upon said Amended and Specific Findings of Fact.

18. The Board erred in failing to find for the Commissioner upon all the facts of record.

Wherefore, the Commissioner petitions that the decision and final order of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Second Circuit, that a transcript of the record be transmitted to the clerk of said court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by the said court.

(Signed) ROBERT H. JACKSON,
Robert H. Jackson,
Assistant Attorney General.

(Signed) MORRISON SHAFROTH,
Morrison Shafroth,
Chief Counsel,
Bureau of Internal Revenue.

(Signed) GEORGE D. BRABSON,
George D. Brabson,
Special Attorney,
Bureau of Internal Revenue.

GDB/MKP 1-15-37.

[Duly sworn to by George D. Brabson; jurat omitted in printing.]

270 In United States Circuit Court of Appeals for the Second Circuit

B. T. A. Docket No. 80769

[Title omitted.]

Notice of filing petition for review

To: Mr. JOHN J. MULCAHY,
111 Eighth Avenue, New York, New York.
Mr. JULIUS HENRY COHEN,
111 Eighth Avenue, New York, New York.

You are hereby notified that the Commissioner of Internal Revenue did, on the 25th day of January 1937, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

Dated this 25th day of January 1937.

(Signed) MORRISON SHAFROTH,
Morrison Shafroth,
Chief Counsel,
Bureau of Internal Revenue.

271 Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 27th day of Jan. 1937.

JOHN J. MULCAHY,
Respondent on Review.
JULIUS HENRY COHEN,
Attorney for Respondent on Review.

GDB/MEP 1-21-37.

272 In United States Circuit Court of Appeals for the Second Circuit

B. T. A. No. 77375

B. T. A. No. 77377

B. T. A. No. 80769

[Titles omitted.]

Stipulation to consolidate

273 Come now the parties to the above-entitled causes, and appearing by their respective counsel of record, stipulate and agree, subject to the approval of the court, as follows:

That for the purpose of briefing, hearing, argument and decision, the three causes appearing in the caption hereof are consolidated and may be heard upon a single printed record consisting of such documents as the parties may indicate by praecipe for record.

That because of its length, and to avoid unnecessary duplication, the statement of evidence heretofore filed herein shall be printed in the printed transcript of record but once and shall be taken and considered as and for a statement of evidence applicable to and referable to all the causes appearing in the caption hereof.

That, among other things, the record on review shall contain this stipulation.

(S.) MORRISON SHAFROTH,
Morrison Shafroth,

*Chief Counsel, Bureau of Internal Revenue,
Counsel for Petitioner on Review.*

(S.) JULIUS HENRY COHEN,
Counsel for Respondents on Review.

274 In United States Circuit Court of Appeals for the Second
Circuit

B. T. A. No. 77375

COMMISSIONER OF INTERNAL REVENUE, PETITIONER ON REVIEW

v.

PHILIP L. GERHARDT, RESPONDENT ON REVIEW

B. T. A. No. 77377

COMMISSIONER OF INTERNAL REVENUE, PETITIONER ON REVIEW

v.

BILLINGS WILSON, RESPONDENT ON REVIEW

B. T. A. No. 80769

COMMISSIONER OF INTERNAL REVENUE, PETITIONER ON REVIEW

v.

JOHN J. MULCAHY, RESPONDENT ON REVIEW

Statement of evidence.

275 The following is a statement in narrative form of the evidence adduced in the above-entitled causes, including by reference the written stipulations of facts and exhibits thereto, together with a statement of the several stipulations and agreements of counsel for the parties entered into at the hearing before the United States Board of Tax Appeals.

These causes came on for hearing before the Honorable John M. Sternhagen, Member of the United States Board of Tax Appeals,

on February 3 to 6, 1936. Julius Henry Cohen, Esq., Austin J. Tobin, Esq., and Wilbur LaRoe, Jr., Esq., appeared for the petitioners, and George D. Brabson, Esq., Francis H. Uriell, Esq., and John D. Kiley, Esq., appeared for the respondent.

By agreement of counsel for all parties the several causes were consolidated for purposes of hearing and decision.

By agreement of counsel for all parties there was filed in evidence a printed document entitled "Stipulation of Facts" dated January 21, 1936, and consisting of 123 printed paragraphs with Exhibits A to S, inclusive, therein incorporated by reference; which Stipulation of Facts reads as follows (Exhibits A to S, inclusive, are not incorporated herein but are included as part of this statement of evidence as physical Exhibits):

276 Before United States Board of Tax Appeals

Docket No. 75816

Docket No. 77376

Docket No. 77375

[Titles omitted.]

Stipulation of facts

The parties hereto, by their undersigned counsel of record, hereby stipulate and agree that the following facts shall be taken as proved upon the filing of this stipulation, subject to their relevancy, competency, and materiality and subject to the right of either
277 party to introduce further evidence not inconsistent with the terms of this stipulation.

1. The three petitioners above named are individuals and citizens of the United States. The petitioner Montgomery B. Case is a resident of Englewood, County of Bergen, in the State of New Jersey. The petitioner, Philip L. Gerhardt, is a resident of the County of Kings, City and State of New York. The petitioner, E. Morgan Barradale, is a resident of South Orange, County of Essex, in the State of New Jersey.

2. Each of the three petitioners above named is an employee of The Port of New York Authority.

3. That The Port of New York Authority (hereinafter referred to as the Port Authority) was organized pursuant to a compact between the States of New York and New Jersey, dated April 30, 1921, pursuant to Chapter 154 of the Laws of New York, 1921, and Chapter 151 of the Laws of New Jersey, 1921, and confirmed by resolution of Congress of the United States, Public Resolution No. 17-67th Congress (S. J. Res. 88), and that the Port Authority was and is vested with the powers therein granted to it, and such other powers as are granted by Chapter 43 of the Laws of New York, 1922, and

Chapter 9 of the Laws of New Jersey, 1922, adopting a comprehensive plan for the development of the port of New York district, and such further powers as are granted by such other statutes of the States of New York and New Jersey as pertain to said The Port of New York Authority.

278 4. That the Compact hereinbefore referred to was a Compact between the States of New York and New Jersey amending and supplementing the Compact of 1834 between the same two states.

5. That by reason of the fact that the Hudson and North Rivers, the Kill van Kull and the Arthur Kill, as well as other portions of the bay and harbor of New York, constitute and form the political boundary between the States of New York and New Jersey, it has been necessary that any action that has been taken by the two states for the development of the Port as a whole, be joint action by the two states.

6. That prior to and in the year 1916 the States of New York and New Jersey, whose northerly and southerly boundary lines lie within the Port of New York, found themselves faced with the problem of the Port's future development.

7. In 1911, President Wilson, then Governor of New Jersey, appointed a commission to study the problem of the development of the Port of New York in cooperation with a commission representing the State of New York.

8. That following the report of that commission to the Legislature of New Jersey in 1914, there was created a New Jersey Harbor Commission.

9. That in 1915 that Commission was merged, together with several others, into the New Jersey Board of Commerce and Navigation.

279 10. That as a result of reports made by that Commission, the then Governor of New Jersey, Honorable James F. Fielder, appointed a Special Committee to discover ways and means for securing a readjustment of the freight rates to the Port District in favor of the New Jersey side of the harbor.

11. That this committee, which was known as the "Committee on Ways and Means to Prosecute the Case of Alleged Railroad Rate and Service Discrimination at the Port of New York," instituted a proceeding before the Interstate Commerce Commission which was officially known as the New York Harbor Case, Docket No. 8994, 47 I. C. C. 643.

12. That the New York Harbor Case, which sought a revision of railroad freight rates in favor of New Jersey, aroused considerable opposition on the part of the State of New York, the City of New York, and various civic and commercial organizations.

13. The decision of the Interstate Commerce Commission in the New York Harbor Case aroused considerable public discussion of the problems involved, including discussions of the desirability of a revision in the methods of handling the port traffic, the desirability of

unifying the port's transportation system, and such efforts as might be desirable upon the part of both states to effectuate the reorganization.

14. That in 1917 and upon the invitation of the New York
280 State Chamber of Commerce, Governor Edge of New Jersey and Governor Whitman of New York were brought into conference on the problems of Port Development.

15. That subsequently, in the year 1917, the Legislatures of the two States authorized their respective Governors to appoint members of the New York-New Jersey Port and Harbor Development Commission and appropriated \$450,000 for the work of the Commission.

16. That the said Commission was duly appointed by the Governors of the two states and directed, pursuant to the Act providing for its appointment, to make a comprehensive survey of port and harbor conditions, and if any conditions therein appeared to be in need of remedy or change, to recommend proper and adequate remedies and changes therefor. That said Commission undertook and thoroughly carried out said survey and made progress reports of conditions from time to time, including the recommendations in 1918, of an interstate compact to provide a bi-state corporate agency, to carry out a comprehensive plan of port and harbor development under the direction of the two states and proposed a tentative draft of such a Compact for consideration by the Governors and Legislatures of both States. A copy of the Preliminary Joint Report of the New York-New Jersey Port and Harbor Development Commission, containing said recommendations, which was transmitted to the Legislatures of both States on February 18, 1918, will be presented to the Board simultaneously with this stipulation and shall be deemed a part hereof, designated as Exhibit "A."

281 17. That the first public consideration of the tentative draft of a compact between the two states approved in said Joint Report was given at a meeting held at the New York Chamber of Commerce on December 19, 1918, at which were present Honorable Charles S. Whitman, the Governor of New York, Honorable Walter E. Edge, Governor of New Jersey, Honorable Charles E. Hughes, Honorable Alfred E. Smith, and others.

18. That thereafter a bi-state legislative commission was appointed to cooperate with the New York-New Jersey Port and Harbor Development Commission in the revision of said tentative draft of the Compact and that sub-committees were formed consisting of the Attorneys General of both states, the majority and minority leaders of both Houses of both states and the Corporation Counsels of New York City and of Jersey City.

19. That thereafter and in 1919, said Joint Commission, having completed its survey, presented to and filed with the Legislatures of the two states and with the Governors thereof their "Joint Report with Comprehensive Plan and Recommendations." That a certain book entitled "Joint Report with Comprehensive Plan and Recom-

mendations—New York-New Jersey Port and Harbor Development Commission, and printed in Albany in the State of New York by J. B. Lyon Company, Printers, in 1920, is a true and accurate copy of the Joint Report with Comprehensive Plan and recommendations submitted by the said New York-New Jersey Port and Harbor Development Commission to the Governor of the State of New York and the Governor of the State of New Jersey, and to the Legislatures of both States, under date of December 16, 1920. That a copy of said Joint Report with Comprehensive Plan and Recommendations will be presented to the Board simultaneously with the presentation of this stipulation and shall be deemed to be a part hereof, designated as Exhibit B.

20. That the adoption of the Compact between the States of New York and New Jersey and the enactment of the Comprehensive Plan was preceded by the report to the Legislatures of both states of the New York-New Jersey Port and Harbor Development Commission, which was the same report referred to in the preceding paragraph.

21. The petitioners contend that the following documents, designated Exhibits C and D respectively, are material and competent and should be accepted as evidence in this case. Respondent denies that said exhibits are either material or competent. These exhibits will therefore be offered in evidence by the attorney for the petitioners subject to the respondent's express reservation and objection.

Exhibit C, a copy of which will be presented to the Board simultaneously with the presentation of this stipulation and, subject to the reservation and objection upon the part of the respondent noted above, shall be deemed a part hereof, consists of a special message to the

Legislature of the State of New York, sent by Governor Alfred E. Smith, on March 29, 1920, urging upon the Legislature the adoption of the Compact. It is set forth in a volume entitled "Public Papers of Governor Alfred E. Smith—1920" printed in Albany, in the State of New York, by J. B. Lyon Company, printers, in 1921, at pages 251-261, inclusive, thereof.

Exhibit D, a copy of which will be presented to the Board simultaneously with the presentation of this stipulation and, subject to the reservation and objection upon the part of the respondent noted above, shall be deemed a part hereof, consists of a special message to the Legislature of the State of New York, sent by Governor Nathan L. Miller during the year 1921, also urging upon the Legislature the adoption of the Compact. It is set forth in a volume entitled "Public Papers of Governor Miller—1921" printed in Albany, in the State of New York, by J. B. Lyon Company, printers, in 1924, at pages 83-86, inclusive, thereof.

22. That thereafter the Legislatures of the States of New York and New Jersey passed Acts authorizing certain designated persons, as Commissioners on the part of said States, to execute an agreement or compact between said States of New York and New Jersey in the form set forth in the said acts. The Act of the State of New York, being Chapter 154, Laws of New York, 1921, became a law

April 2, 1921, with the approval of the Governor and the Act of the State of New Jersey, being Chapter 151 of the Laws of New Jersey, 1921, became a law April 7, 1921, with the approval of the Governor of that State. That subsequently and in the month of August 1921 the Congress of the United States consented to said Compact by Public Resolution No. 17—67th Congress; S. J. Res. 88 (August 23, 1921).

23. That on April 30, 1921, the aforesaid Compact between the States of New York and New Jersey, establishing the Port District and creating The Port of New York Authority, was formerly signed by the Commissioners duly authorized so to do by the respective Legislatures in the Great Hall of the Chamber of Commerce of the State of New York. That a certain book entitled "Port Authority Statutes—Sixth Edition" issued by the Port Authority under date of January 1934, with Cumulative Supplement to June 1, 1935, contains, at pages 13 to 28, inclusive, of said book, a true and accurate copy of said Compact of April 30, 1921, and also contains, in other portions thereof, and in said Cumulative Supplement, true and accurate copies of the other compacts, statutes, and resolutions having to do with The Port of New York Authority, which are herein referred to. A copy of said "Port Authority Statutes—Sixth Edition— and Cumulative Supplement to June 1, 1935", will be presented to the Board simultaneously herewith and shall be deemed to be a part hereof designated as Exhibit E.

24. That by Chapter 152 of the Laws of New Jersey, 1921, J. Spencer Smith, Frank R. Ford, and DeWitt Van Buskirk were selected and appointed as Commissioners to "The Port of New York Authority." That by Chapter 203 of the Laws of New York, 1921, the Governor of the State of New York was authorized by and with the consent of the Senate to appoint three Commissioners to the aforesaid Port Authority, and that Nathan L. Miller, the then Governor of the State of New York, did, pursuant to such legislation, and with the consent of the Senate, appoint Eugenius H. Outerbridge, Alfred E. Smith, and Lewis H. Pounds as Commissioners thereof. That having taken the oath of office the aforesaid Commissioners met for organization on April 25, 1921, all of the Commissioners being present, and organized The Port of New York Authority by electing officers and appointing members of the staff.

25. That the said Compact of 1921 created a district to be known as the "Port of New York District" having specified geographical boundaries set forth in said Compact, and gave to The Port of New York Authority certain powers and jurisdiction therein in said Compact more particularly set forth.

26. That pursuant to the terms and provisions of the Compact, the aforesaid Port Authority investigated conditions within the port district and made findings and recommendations with respect thereto.

That pursuant to Chapter 203 of the Laws of New York, 1921, and Chapter 152 of the Laws of New Jersey, 1921, the Port Authority on or about the 21st day of December 1921 presented to the Governor of the State of New York and to the Governor of the State of New Jersey its report and recommendations together with a plan for the comprehensive development of the Port of New York.

286 That a true and accurate copy of said "Report with Plan for the Comprehensive Development of the Port of New York" published in Albany, in the State of New York, by J. B. Lyon Company, printers, in the year 1921, will be presented to the Board simultaneously herewith and shall be deemed to be a part hereof, designated as Exhibit F.

27. That pursuant to Article X of the aforesaid Compact of April 30, 1921, and in accordance with the findings of recommendations of the New York-New Jersey Port and Harbor Development Commission embodied in its Joint Report with Recommendations hereinbefore referred to, and of The Port of New York Authority embodied in its Report with Plan for the Comprehensive Development of the Port of New York, dated December 21, 1921, the two States of New York and New Jersey adopted by joint legislation a Comprehensive Plan for the development of the Port of New York District and mutually agreed to carry out said plan and entrusted the effectuation thereof to The Port of New York Authority. That said comprehensive plan is embodied in Chapter 43 of the Laws of New York, 1922, and Chapter 9 of the Laws of New Jersey, 1922, approved by the Congress of the United States (Public Resolution No. 66—67th Congress—H. J. Res. 337), and the full text thereof is accurately set forth in the book entitled "Port Authority Statutes—Sixth Edition," pages 33 to 44, inclusive, a copy of which, following its presentation, in accordance with Paragraph 23 hereof, has heretofore been designated Exhibit E in this stipulation.

287 28. That said comprehensive plan for the development of the Port of New York District provides in part as follows:

"Section 8. The port of New York Authority is hereby authorized and directed to proceed with the development of the port of New York in accordance with said comprehensive plan as rapidly as may be economically practicable and is hereby vested with all necessary and appropriate powers not inconsistent with the constitution of the United States or of either state to effectuate the same, except the power to levy taxes or assessments * * *. The port authority shall be regarded as the municipal corporate instrumentality of the two states for the purpose of developing the port and effecting the pledge of the states in said compact, but it shall have no power to pledge the credit of either state or to impose any obligation upon either state or upon any municipality, except as and when such power is expressly given by statute, or the consent of any such municipality is given."

29. That the joint resolution giving consent of Congress to the said

comprehensive plan (Public Resolution No. 66—67th Congress), provides in part as follows:

“And the consent of Congress is hereby given to the carrying out and effectuation of said comprehensive plan and the said Port
288 of New York Authority is authorized and empowered to carry out and effectuate the same”;

30. That on August 7, 1923, the Governors of the State of New York and of the State of New Jersey delivered to the Port Authority a joint statement outlining their views as to construction of additional vehicular tunnels or bridges between the States of New York and New Jersey, and requested the Port Authority to investigate the matter and make a report to said Governors with suggested legislation, if any were necessary, in time to be submitted to the respective legislatures early in their sessions of 1924. That said joint statement in part read as follows:

“One of the results of the conference between the two Governors was that we favor the construction at the earliest possible moment of additional vehicular tunnels or bridges between the State of New York and the State of New Jersey to be determined upon, constructed, and financed by the Port Authority and we stand ready to recommend to the Legislatures the passage of any additional legislation that will be helpful toward the accomplishment of this result.”

31. Following the receipt of the aforesaid communication from the Governors of the two states, the Port Authority proceeded to make preliminary studies of traffic conditions, present building costs, and other material questions relating to transportation between the
New York and New Jersey shores of the Hudson River, the
289 Arthur Kill and the Kill van Kull insofar as they might bear upon the question of the construction of tunnels or bridges and the most desirable locations therefor.

32. That on December 5, 1923, after due notice had been given in the public press and by direct communication to the municipalities, trade bodies, and transportation interests within the Port District, a public hearing on the subject of additional vehicular tunnels or bridges between the State of New York and the State of New Jersey was held, which meeting was attended by eighty persons representing forty-eight separate organizations, of which forty presented written or oral statements relating to the subject.

33. That on December 21, 1923, the Commissioners of the Port Authority rendered to the Governor of the State of New York and to the Governor of the State of New Jersey a “Report on Vehicular Tunnels and Bridges” which set forth the studies and hearings upon the subject of additional vehicular tunnels or bridges between the States of New York and New Jersey, and recommended, among other things, that preliminary engineering and traffic studies of plans for a bridge north of 125th Street, between the Borough of Manhattan and the State of New Jersey, and for at least two additional vehicular tunnels between New York and New Jersey should

be promptly undertaken. That a true copy of said report is set forth in a volume entitled "Port of New York Authority Annual Report," dated January 19, 1924, published by J. B. Lyon Company, Printers, Albany, N. Y., 1924, at pages 43 to 49, inclusive, thereof. A complete series of the Annual Reports of the Port Authority for the calendar years 1921 through 1934, inclusive, will be presented to the Board simultaneously with the presentation of this stipulation and shall be deemed a part hereof, and collectively designated as "Exhibit G."

34. That on January 19, 1924, The Port of New York Authority submitted to the Governor of the State of New York and to the Governor of the State of New Jersey its Report for the calendar year 1923 which contained at pages 21 to 24, inclusive, thereof a summary of further findings and studies with respect to the necessity of constructing additional vehicular crossings between the States of New York and New Jersey.

35. That by joint legislation embodied in Chapter 125 of the Laws of New Jersey, 1924, and Chapter 230 of the Laws of New York, 1924, the States of New York and New Jersey authorized The Port of New York Authority, in partial effectuation of the comprehensive plan for the development of the Port of New York, to construct, operate, maintain, and own a bridge with the necessary approaches thereto across the Arthur Kill between Perth Amboy on the New Jersey side and Tottenville on the New York side.

36. That by joint legislation embodied in Chapter 149 of the Laws of New Jersey, 1924, and Chapter 186 of the Laws of New York, 1924, the States of New York and New Jersey authorized The Port of New York Authority, in partial effectuation of the comprehensive plan for the development of the Port of New York to construct, operate, maintain and own a bridge with the necessary approaches thereto across the Arthur Kill between Elizabeth on the New Jersey side and Howland Hook on the New York side.

37. That during the calendar year 1924 the Port Authority, with the aid of appropriations by the two states aggregating \$200,000 appropriated therefor, made borings, surveys, and engineering studies as to the character and location of said bridges, thoroughly canvassed local sentiment, attended meetings of local interests and meetings with committees appointed by the Mayors of the three municipalities concerned, made counts of the vehicular traffic crossing all the ferries on the Arthur Kill and Kill van Kull, investigated the records of the ferry companies and made other studies with reference to the necessity and desirability of constructing the aforesaid bridges across the Arthur Kill.

That in its annual report for the calendar year 1924 to the Governor of the State of New York and the Governor of the State of New Jersey, dated January 24, 1925, the Port Authority presented to the two states a resumé of its work in connection with said bridges, set forth on pages 42 to 43 inclusive of said report.

38. That during the calendar year 1925, the Port Authority continued its studies with respect to the two bridges across the Arthur Kill, and obtained the approval of the War Department of the Federal Government to construction of said bridges.

39. That during the year 1926, the Port Authority, in accordance with the directions of the two State Legislatures, as aforesaid, commenced construction of the two bridges across the Arthur Kill, one between Perth Amboy in the State of New Jersey, and Totenville in the State of New York, which bridge was named the Outer-bridge Crossing, and the other between Elizabeth in the State of New Jersey and that section of Staten Island in the State of New York, known as Howland Hook, which bridge was named the Goethals Bridge. That such construction work was pursued until the said bridges were opened for traffic on June 29, 1928, having been completed at a cost in excess of \$17,000,000. That this cost was financed by the advance to the Port Authority of \$4,000,000 by the two states, and through the sale of bonds of the Port Authority, which bonds are known as "New York-New Jersey Interstate Bridge Bonds—Series A," in the amount of \$14,000,000.

40. That the Port Authority has since continued to own, maintain, and operate, and is at present maintaining and operating and does own the aforesaid bridges over the Arthur Kill, in partial effectuation of the Comprehensive Plan. That in its operation of these bridges the Port Authority may and has charged tolls to defray the maintenance, operation, and general expenses of these bridges, interest charges and to repay the aforesaid "New York-New Jersey Interstate

Bridge Bonds—Series A," the advances made by the two states, debt service on General and Refunding Bonds (which, however, under existing statutes cannot be issued for any new facilities except two inland terminals in Manhattan and two marine terminals in New Jersey) and, through its general reserve fund, debt service on its other now outstanding bonds. That the total of the tolls paid during the year 1934 on these two bridges was in excess of \$400,000, being paid by traffic in excess of 800,000 vehicles.

41. That for the years 1928, 1930, and 1931, the operation of these bridges resulted in annual surpluses, as follows:

| | |
|------|----------------|
| 1928 | \$272, 678. 75 |
| 1930 | 76, 683. 54 |
| 1931 | 40, 673. 37 |

That for the years 1929, 1932, 1933, and 1934, the operation of these bridges resulted in annual net deficits, as follows:

| | |
|------|---------------|
| 1929 | \$23, 340. 21 |
| 1932 | 187, 272. 17 |
| 1933 | 295, 534. 46 |
| 1934 | 298, 851. 29 |

The surplus noted for the year 1928 resulted from the fact that interest on the funded debt of the two bridges for that year was charged to the investment account, for the reason that although the

two bridges had been opened to traffic on June 29, 1928, as aforesaid, the Commissioners of the Port Authority did not regard the construction program as completed until the end of the year 1928.

294 42. That in the operation of these bridges and direction of traffic thereon, the Port Authority maintains its own uniform police force consisting of men appointed by the Port Authority and who are designated as regular peace and police officers of both states by Chapter 388, Laws of New York, 1928, and Chapter 113, Laws of New Jersey, 1932.

43. That by joint legislation embodied in Chapter 41 of the Laws of New Jersey, 1925, and Chapter 211 of the Laws of New York, 1925, the States of New York and New Jersey authorized and empowered The Port of New York Authority, in partial effectuation of the Comprehensive Plan for the development of the Port of New York, to construct, operate, maintain, and own a bridge with the necessary approaches thereto across the Hudson River from points between 170th Street and 185th Street, Borough of Manhattan, and points approximately opposite thereto in the Borough of Fort Lee, Bergen County, New Jersey, and appropriated the sum of \$200,000—\$100,000 by each State—for the making of preliminary studies with reference to said bridge.

44. That during the calendar year 1925, the Port Authority undertook studies for the bridge across the Hudson River from Fort Lee to Manhattan of the same character undertaken with respect to the Arthur Kill Bridges, and the said studies are reported upon in the annual report of The Port of New York Authority to the Governors of the States of New York and New Jersey for the calendar year 1925, dated January 15, 1926, at pages 13 to 19 inclusive thereof.

295 45. That during the calendar year 1926, the Port Authority continued its studies with reference to the character and location of the Hudson River Bridge between Washington Heights in the Borough of Manhattan, City of New York, and the Borough of Fort Lee, New Jersey. That such studies were fully reported upon by the Port Authority to the Governor and Legislature of the State of New York and to the Governor and Legislature of the State of New Jersey in the annual report of The Port of New York Authority for the calendar year 1926, dated January 20, 1927, at pages 47 to 69, inclusive, thereof.

46. That during the year 1927 the Port Authority, in accordance with the directions of the two State Legislatures, as aforesaid, commenced construction of the said bridge over the Hudson River between Fort Lee in the State of New Jersey and the Borough of Manhattan in the City and State of New York, which bridge is known as the George Washington Bridge. That such work was pursued until the said bridge was opened for traffic on October 25, 1931, having been completed at a cost in excess of \$57,000,000. That this cost was financed by the advance to the Port Authority of \$9,800,000 by the two states, and through the sale of bonds of the

Port Authority, which bonds are known as "New York-New Jersey Interstate Bridge Bonds, Series B," in the amount of \$50,000,000.

47. That the said George Washington Bridge is the largest suspension bridge in the world open today to traffic.

296 48. That the Port Authority has since continued to own, maintain, and operate, and is at present maintaining and operating and does own the aforesaid George Washington Bridge over the Hudson River, in partial effectuation of the Comprehensive Plan. That in its operation of this bridge the Port Authority may charge and is charging tolls to defray the maintenance, operation, and general expenses of this bridge, interest charges, and to repay the bonds sold for its construction, the advances by the two States, debt service on General and Refunding bonds (which, however, under existing statutes cannot be issued for any new facilities except two inland terminals in Manhattan and two marine terminals in New Jersey) and, through its General Reserve Fund, debt service on its other now outstanding bonds. That the total of the tolls paid during the year 1934 was in excess of \$3,300,000, being paid by traffic in excess of 6,150,000 vehicles.

49. That for the years 1931 to 1934, inclusive, the operation of the George Washington Bridge resulted in a net income from operations, prior to deductions for amortization, as follows:

| | |
|-----------|-----------------|
| 1931..... | \$504, 284. 08 |
| 1932..... | 1, 473, 363. 61 |
| 1933..... | 1, 142, 770. 42 |
| 1934..... | 1, 356, 476. 67 |

50. That in the operation of this bridge and direction of traffic thereon, the Port Authority maintains its own uniform police force consisting of men appointed by the Port Authority and who
297 are designated as regular peace and police officers of both states by Chapter 388, Laws of New York, 1928, and Chapter 113, Laws of New Jersey, 1932.

51. That by joint legislation embodied in Chapter 97 of the Laws of New Jersey 1925, and Chapter 279 of the Laws of New York 1926, The Port of New York Authority was authorized and empowered, in partial effectuation of the Comprehensive Plan for the development of the Port of New York, to construct, operate, maintain, and own a bridge with the necessary approaches thereto across the Kill van Kull from Bayonne on the New Jersey side to Staten Island on the New York side.

52. That during the calendar year 1926, the Port Authority continued its studies with reference to the character and location of such a bridge across the Kill van Kull between Bayonne in the State of New Jersey, and Port Richmond, Staten Island, in the State of New York. That such studies were fully reported upon by the Port Authority to the Governor and Legislature of the State of New York in the annual report of The Port of New York Authority for the calendar year 1926, dated January 20, 1927, at page 67 thereof.

53. That during the year 1928, the Port Authority, in accordance with the authorization of the two State Legislatures, as aforesaid, commenced construction of the said bridge over the Kill van Kull between the City of Bayonne on the New Jersey side and Port Richmond, Staten Island, on the New York side, which bridge was named the Bayonne Bridge. That such work was pursued until the Bayonne Bridge was opened for traffic on November 15, 1931, having been completed at a cost in excess of \$13,000,000. That this bridge was financed by the advance to the Port Authority of \$4,100,000 by the two states, and through the sale of bonds of the Port Authority, which bonds are known as "New York-New Jersey Interstate Bridge Bonds, Series C," in the amount of \$12,000,000.

54. That the Port Authority has since continued to own, maintain, and operate, and is at present maintaining and operating and does own the aforesaid Bayonne Bridge over the Kill van Kull, in partial effectuation of the Comprehensive Plan. That in its operation of this bridge the Port Authority may charge and is charging tolls to defray the maintenance, operation, and general expenses of this bridge, interest charges, and to repay the bonds sold for its construction, the advances by the two States, debt service on General and Refunding Bonds (which, however, under existing statutes cannot be issued for any new facilities except the two inland terminals in Manhattan and two marine terminals in New Jersey) and, through its General Reserve Fund, debt service on its other now outstanding bonds. That the total of the tolls paid during the year 1934 was in excess of \$210,000, being paid by traffic in excess of 450,000 vehicles.

55. That for the year 1931, the operation of the Bayonne Bridge resulted in an annual surplus of \$25,400.29.

299 That for the years 1932 to 1934, inclusive, the operation of the Bayonne Bridge resulted in annual net deficits, as follows:

| | | |
|------|-------|--------------|
| 1932 | ----- | \$101,406.11 |
| 1933 | ----- | 240,890.18 |
| 1934 | ----- | 163,848.67 |

The surplus noted for the year 1931 resulted from the fact that interest on the funded debt of the bridge for that year was charged to the investment account, for the reason that although the bridge was opened for traffic on November 15, 1931, as aforesaid, the Commissioners of the Port Authority did not regard the construction program as completed until the end of the year 1931.

56. That in the operation of this bridge and direction of traffic thereon, the Port Authority maintains its own uniform police force consisting of men appointed by the Port Authority and who are designated as regular peace and police officers of both states by Chapter 388, Laws of New York, 1928, and Chapter 113, Laws of New Jersey, 1932.

57. That prior to, and independently of their consideration of a Comprehensive Plan for the development of the Port of New York,

the States of New York and New Jersey had for many years, back at least as far as 1906, examined and investigated the necessity for, and practicability of, construction of one or more vehicular bridges or tunnels across the North or Hudson River between the Borough of Manhattan, City of New York, and the neighboring metropolitan areas on the westerly side of the River in the State of New Jersey:

300 58. That by Chapter 260 of the Laws of New York, 1906, there was created "The New York Interstate Bridge Commission," consisting of three members appointed by the Governor, for the purpose of conferring, on behalf of the Governor and Legislature of the State of New York, with the Governor and Legislature of the State of New Jersey for the purpose of considering the feasibility and practicability of constructing one or more bridges over the Hudson River from the City of New York to the State of New Jersey at the joint expense of both States.

59. That by Chapter 319 of the Laws of New York, 1907, the number of Commissioners of the New York Interstate Bridge Commission was increased to five, one of the additional members to be appointed by the Mayor of the City of New York and the other to be the incumbent of the office of Commissioner of Bridges of the said City. From time to time thereafter additional legislation was enacted continuing the Commission, making appropriations for its needs and extending its powers. By Chapter 189 of the Laws of New York, 1913, the Commission was authorized to consider the possibilities of vehicular tunnel construction and its name changed to "The New York State Bridge and Tunnel Commission."

60. That throughout its existence the New York State Bridge and Tunnel Commission conferred and cooperated with New Jersey Commissions and other agencies, both official and unofficial in character, and rendered reports to the Governor and Legislature of the State.

301 61. Private individuals and organizations both in the States of New York and New Jersey investigated and made reports on the need of such a tunnel.

62. That by Chapters 49 and 50 of the Laws of New Jersey, 1918, the Governor and Legislature of that State created The New Jersey Interstate Bridge and Tunnel Commission and authorized the construction of a bridge or tunnel or tunnels across the Hudson and Delaware Rivers at the direct expense (so far as New Jersey's share of the cost was involved) of the State.

63. That the New Jersey State Legislature of 1919, by Chapter 70 of the Laws of New Jersey, 1919, provided funds in the amount of one million dollars for the construction of a tunnel or tunnels under the Hudson River and five hundred thousand dollars for construction of a bridge across the Delaware River and ten thousand dollars for expenses incidental to the work and enabled The New Jersey Interstate Bridge and Tunnel Commission to take up with renewed vigor the final preliminary work prior to construction of

the interstate bridges and tunnels which the Legislature directed the Commission to construct. That the Legislature of the State of New York took similar action immediately in the same year and provided as its share of funds for the construction of a tunnel or tunnels by appropriating for the use of The New York Interstate Bridge and Tunnel Commission the sum of one million dollars.

64. That on or about the 30th day of December 1919, pursuant to the authorization of the Legislatures and Governors of both States, the State of New York, acting by and through The New York Interstate Bridge and Tunnel Commission, and the State of New Jersey, acting by and through The New Jersey Interstate Bridge and Tunnel Commission, entered into an agreement for construction of an interstate vehicular tunnel under the Hudson River between the City of New York and the City of Jersey City, under which said tunnel was to be constructed and operated jointly by the Commissioners as direct agents and representatives of the two States. That prior to the signing of said agreement the Congress of the United States consented thereto by Public Resolution No. 10—66th Congress (S. 409). That copies of said Compact of December 30, 1919, together with copies of the Legislation of both the States of New York and New Jersey, authorizing said Compact and of Public Resolution No. 10—66th Congress (S. 409) are contained in a volume entitled "Port Authority Statutes (Supplement)" revised to July 1931, published by The Port of New York Authority as of July 1, 1931, as a supplement to the Fifth Edition of the Port Authority Statutes, a copy of which will be presented to the Board simultaneously with the presentation of this stipulation and shall be deemed part hereof, designated as Exhibit H.

65. That in the year 1920 The New Jersey Interstate Bridge and Tunnel Commission and The New York Interstate Bridge and Tunnel Commission submitted to the Legislatures of their respective states a complete report of their studies and activities during the year 1919 as to the nature and location of the proposed vehicular tunnel. That copies of the said reports to the Legislatures of the States of New York and New Jersey will be submitted to the Board simultaneously with the presentation of this stipulation and shall be deemed a part hereof and designated as Exhibits I and J.

66. That said tunnel was constructed by said Commission and is now known as the Holland Tunnel. That the share of the cost of the construction of said tunnel to be borne by the State of New York was met by direct appropriations of the State. That New Jersey's share of the cost of construction of said tunnel was defrayed by the proceeds of a bond issue covering the cost of construction, both of said tunnel and of the Delaware River Bridge, which bond issue was authorized by the Governor and the Legislature of the State of New Jersey following its approval by a referendum vote of the people of that state.

67. That following the construction of said Holland Tunnel and its operation over a period of years by the aforesaid New York Interstate Bridge and Tunnel Commission and the aforesaid New Jersey Interstate Bridge and Tunnel Commission, acting as a joint Commission on behalf of both States, it was determined by the States of New York and New Jersey, acting through the Governors and Legislatures thereof, that the operation of said tunnel facility should be conducted and continued as part of the operations of The Port of New York Authority in carrying out the Comprehensive
 304 Plan for the development of the Port of New York. Accordingly, by Chapter 247 of the Laws of New Jersey, 1930, and by Chapter 421 of the Laws of New York, 1930, and the New York-New Jersey Interstate Bridge and Tunnel Commission was merged with The Port of New York Authority, and the Port Authority was vested by the two States of New York and New Jersey with the control, operation, and maintenance of the Holland Tunnel.

68. That by the joint legislation of the two states, embodied in Chapter 4 of the Laws of New Jersey, 1931, and Chapter 47 of the Laws of New York, 1931, being Chapters bearing identical titles as follows:

"An Act declaring the policy of the States of New York and New Jersey in regard to certain vehicular bridges and tunnels within the Port of New York District; and in furtherance of the said policy, vesting the control and operation of the Holland Tunnel in The Port of New York Authority and authorizing the Port Authority to construct an additional interstate vehicular tunnel, and regulating the construction and operation of bridges and tunnels by the Port Authority"

it is provided in part as follows:

"The States of New York and New Jersey hereby declare and agree that the vehicular traffic moving across the interstate waters within the port of New York district, created by the Compact
 305 of April thirty, nineteen hundred twenty-one, between the said states, which said phrase 'interstate waters' as used in this act shall include the portion of the Hudson River within the said port of New York district north of the New Jersey state line, constitutes a general movement of traffic which follows the most accessible and practicable routes, and that the users of each bridge or tunnel over or under the said waters benefit by the existence of every other bridge or tunnel since all such bridges and tunnels as a group facilitate the movement of such traffic and relieve congestion at each of the several bridges and tunnels. Accordingly the two said states, in the interest of the users of such bridges and tunnels and the general public, hereby agree that the construction, maintenance, operation, and control of all such bridges and tunnels, heretofore or hereafter authorized by the two said states, shall be unified under the port of New York authority (hereinafter called the port authority), to the end that the tolls and other revenues therefrom shall be applied so far as practicable to the costs of the construction, maintenance,

and operation of said bridges and tunnels as a group and economies in operation affected, it being the policy of the two said states that such bridges and tunnels shall as a group be in all respects self-sustaining."

69. It is further provided in said joint legislation of the States of New York and New Jersey as follows:

306 "In furtherance of the aforesaid policy, and in partial effectuation of the comprehensive plan heretofore adopted by the two said states for the development of the said port of New York district, the control, operation, tolls, and other revenues of the vehicular tunnel, known as the Holland Tunnel, under the Hudson River between the city of Jersey City and the City of New York, shall be vested in the port authority as hereinafter provided; and the port authority is hereby authorized and empowered to construct, own, maintain, and operate an interstate vehicular tunnel or tunnels (hereinafter called the Midtown Hudson Tunnel) under the Hudson River, together with such approaches thereto and connections and highways as the port authority may deem necessary or desirable.

"The port authority shall from time to time make studies, survey, and investigations to determine the necessity and practicability of additional vehicular bridges and tunnels over or under interstate waters within the said port of New York district, and report to the governors and legislatures of the two states thereon. The port authority shall not proceed with the construction of any additional vehicular bridges and tunnels over or under said interstate waters until hereafter expressly authorized by the two said states."

70. That prior to 1931, the States of New York and New Jersey had by joint legislation embodied in Chapter 420, Laws of New York, 1930, and Chapter 248, Laws of New Jersey, 1930, authorized and empowered the Port Authority to study and report
307 upon such a vehicular tunnel under the Hudson River between a point in the vicinity of 38th Street in the Borough of Manhattan, City and State of New York and a point opposite thereto in the State of New Jersey. That the two states, in the same legislation, had appropriated the sum of \$400,000, \$200,000 being appropriated by each state, for defraying the expenses of such preliminary studies.

71. That during the calendar year 1930, the Port Authority undertook studies covering all phases of the preliminary investigation of such a tunnel under the Hudson River between West 38th Street in Manhattan and the Township of Weehawken, in New Jersey, and submitted a report on the results of these investigations to the Governors and Legislatures of the two States. The principal conclusions of these reports may be found in the annual report of The Port of New York Authority to the Governors of the States of New York and New Jersey covering the calendar year 1930 and dated February 20, 1931, at pages 40 and 41 thereof.

72. That by the aforementioned and quoted legislation, embodied in Chapter 4 of the Laws of New Jersey, 1931, and Chapter 47 of the Laws of New York, 1931, the two states authorized and empowered

the Port Authority, in partial effectuation of the Comprehensive Plan for the development of the Port of New York, to construct, own, maintain, and operate the Midtown Hudson Tunnel under the

308 Hudson River, together with the necessary approaches thereto.
73. That during the calendar years 1931, 1932, and 1933, the Port Authority continued its studies, plans, and preparations with reference to the Midtown Hudson Tunnel. That such studies and conclusions were fully reported upon by the Port Authority to the Governors of the two states in the annual reports of The Port of New York Authority for the calendar years 1931, 1932, and 1933 (Annual Report for the year 1931, dated February 18, 1932, at pages 39 and 40; Annual Report for the year 1932, dated March 1, 1933, at pages 37 to 39 inclusive; Annual Report for the year 1933, dated March 5, 1934, at pages 42 to 44, inclusive).

74. That during the year 1934, the Port Authority, in accordance with the aforesaid directions of the two states, commenced construction of the Midtown Hudson Tunnel. That the Port Authority is now engaged in the construction of said tunnel and that it is planned that the work of construction will be completed and that the tunnel will be opened for traffic during the year 1938.

75. That the estimated cost of the first operating unit of the Midtown Hudson Tunnel, which consists of the southerly tube, is in excess of \$37,500,000 and that this cost was being financed by a loan to the Port Authority by the United States of America, as is more fully recited hereinafter in this stipulation.

309 76. The projects of the Port Authority have been financed in part by outright appropriations of the States of New York and New Jersey; in part by direct advances of the States of New York and New Jersey, as against which the revenues of the projects are to be paid over to the states at the times and in the amounts specified in the statutes applicable thereto; and in part by bond issues of The Port of New York Authority.

As of November 30, 1935 (adjusted to give effect to the sale on December 11, 1935 of \$16,500,000 General and Refunding Bonds, and to give effect to the cancellation on December 20, 1935 of \$14,800,000 of Midtown Hudson Tunnel Notes), the Port Authority's funded debt was as follows:

New York-New Jersey Interstate Bridge Bonds, Series A (Arthur Kill Bridge Construction). Outstanding—\$12,200,000; of which the Port Authority has acquired and pledged \$5,643,000;

New York-New Jersey Interstate Bridge Bonds, Series B 4's, B 4½'s (George Washington Bridge Construction). Outstanding—\$48,420,000; acquired by the Port Authority and pledged \$1,580,000;

New York-New Jersey Interstate Bridge Bonds, Series C (Bayonne Bridge Construction). Outstanding—\$8,861,000; acquired by the Port Authority and pledged \$3,139,000;

New York-New Jersey Terminal Bonds, Series D (Inland Terminal Construction). Outstanding—\$14,820,000; acquired by the Port Authority and pledged \$1,180,000;

310 New York-New Jersey Interstate Tunnel Bonds, Series E (Holland Tunnel). Outstanding—\$46,008,000; acquired by the Port Authority and pledged \$992,000;

General and Refunding Bonds, First Series 4%, Due 1975 (Refunding and Midtown Hudson Tunnel Construction). Outstanding—\$45,331,000;

General and Refunding Bonds, Second Series, 3¾%, Due 1965 (Midtown Hudson Tunnel Construction). Outstanding (as of December 11, 1935) \$16,500,000;

Series F Bonds (George Washington Bridge). Outstanding—\$2,500,000.

Prior to 1931, the Port Authority had issued its A, B, and C Bonds for bridge construction. Each issue is secured by a first lien upon revenues of the particular project, but in each case the lien is suspended as to current revenues when an amount equal to 20% of the issue is accumulated in sinking or special reserve funds, over and above current interest and maturities. The two States have advanced moneys in aid of the bridges as follows: Arthur Kill Bridges: Construction—\$4,000,000, Preliminary Studies—\$200,000; Bayonne Bridge: Construction—\$4,000,000, Preliminary Studies—\$100,000; George Washington Bridge: Construction—\$9,500,000, Preliminary Studies—\$300,000. Except for New Jersey's advance (\$4,500,000) in aid of the George Washington Bridge which was recently liquidated by the issue of Series F Bonds, the Bridge Financing Acts (see Port Authority Statute Book, Exhibit E, pp. 100, 130, 147, 168, 177, 187) require the repayment of the foregoing advances out of bridge revenues, in the amounts and at dates specified in the statutes, but this requirement is subject to the prior liens of the bridge bonds.

311 In 1931, the two states agreed that bridges and tunnels crossing interstate waters, in the Port District, should be unified under the Port Authority (Chapter 47, Laws of New York, 1931; Chapter 4, Laws of New Jersey, 1931), and further agreed that surplus revenues from various Port Authority projects should be pooled in a General Reserve Fund to support various Port Authority securities (Chapter 48, Laws of New York, 1931; Chapter 5, Laws of New Jersey, 1931). At the same time, the States vested the Port Authority with the control and operation of the Holland Tunnel.

The bonds of the Port Authority have been issued or contracted to be issued to the general public, as exempt from Federal and State taxation, based upon the opinion of Counsel that they were so exempt. Respondent denies that the bonds of the Port Authority are exempt from Federal taxation.

The same year, the Port Authority issued its Series D and E Bonds (secured respectively by the revenues of the Holland Tunnel and Port Authority Inland Terminal No. 1), and pledged its General Reserve Fund as security for all of its outstanding issues, including the prior bridge issues.

In 1933, the Port Authority entered into an agreement with the United States (acting through the Federal Emergency Administration of Public Works) for the financing of the first operating unit of the Midtown Hudson Tunnel. Pursuant to this agreement, \$2,500,000 of Midtown Hudson Tunnel Notes were issued to refund prior bank loans for tunnel purposes, and the Government purchased installments of Midtown Hudson Tunnel Notes aggregating \$12,300,000.

In 1935, the Port Authority adopted a program for the refunding of its then outstanding obligations aggregating \$152,000,000 (Series A to E, inclusive, and Midtown Hudson Tunnel Notes) through the medium of its General and Refunding Bonds, which are supported by a pledge of its General Reserve Fund and (subject to prior liens and to the repayment of State advances) by a pledge of revenues of projects now in operation or under construction. In addition, all bonds acquired pursuant to the refunding program with the proceeds of General and Refunding Bonds are pledged as collateral security for General and Refunding Bonds. Each issue of bonds so pledged is to be fully retired and cancelled when the entire issue has been acquired, except that no bridge issue is to be fully retired and cancelled until the advances made by the State for the particular project have been liquidated or amortized.

Pursuant to its refunding program, the Port Authority has refunded the bonds shown above as acquired for retirement. It has also refunded and fully retired and cancelled the entire issue of Midtown Hudson Tunnel Notes. Negotiations are now being carried on with the Federal Emergency Administration of Public Works looking to the cancellation of the existing Loan Agreement, and the making of an outright grant in aid of the construction of the Midtown Hudson Tunnel not to exceed \$4,780,000.

The distribution of Port Authority revenues as of November 1, 1935 (prior to the sale of \$16,500,000 of General and Refunding Bonds on December 11, 1935, and prior to the cancellation of the Midtown Hudson Tunnel Notes issue), is shown upon Exhibit K.

The foregoing agreement with the Government for the financing of the first operating unit of the Midtown Hudson Tunnel contained a provision that the Government should be furnished with opinions of the Port Authority's General Counsel and of its Bond Counsel to the effect that the Midtown Hudson Tunnel Notes were "exempt, under the Constitution of the United States as now in force, from any and all taxation (except estate, inheritance, and gift taxes) now or hereafter imposed by the United States of America or by the States of New York or New Jersey," and that the Government should be under no obligation to purchase any of the Notes unless it was satisfied on that point.

Such opinions were furnished and the aforesaid Midtown Hudson Tunnel Notes were accepted by the Government. A true copy of said Loan Agreement of September 1, 1933, between the United States of America and The Port of New York Authority, together

also with the Supplemental Loan Agreement of March 18, 1935, will be presented to the Board simultaneously with the presentation of this stipulation and shall be deemed a part hereof designated as Exhibit L.

Respondent objects to the inclusion of the foregoing two
314 paragraphs as a part of this stipulation as incompetent and irrelevant to the issues, and to the introduction of Exhibit L in evidence upon the same ground.

Specimen copies of bonds in all of the foregoing issues have been bound in a pamphlet and will be presented to the Board simultaneously with the presentation of this stipulation and shall be deemed a part hereof, designated as Exhibit M.

77. That by Chapter 96 of the Laws of New Jersey, 1934, claims between the State of New Jersey and the Port Authority were adjusted and liquidated by the payment of the sum of \$500,000 by the Port Authority to the State of New Jersey. These claims had to do with appropriations made by the State of New Jersey to the Port Authority in aid of the construction of the George Washington Bridge, of which a balance was due and unpaid by the State; and agreement between the Port Authority and the State Highway Commission by which the Port Authority was to bear the cost of certain highway construction work whenever traffic over the George Washington Bridge amounted to ten million (10,000,000) vehicles a year; and also certain moneys which were due and payable by the State of New Jersey to the Port Authority under the provisions of Article XV of the Compact.

Under the provisions of Chapter 293 of the Laws of New York, 1935, and Chapter 165 of the Laws of New Jersey, 1935, the two States authorized the adjustment of, and the State of New Jersey
adjusted and liquidated, claims arising in their favor by
315 reason of advances made to the Port Authority in connection with the construction of the George Washington Bridge.

78. A true and accurate statement of the financial condition of the Port Authority is to be found in the Annual Reports issued by the Port Authority, all of which have been presented to the Board under the provisions of Paragraph 33 of this stipulation.

79. That the Port Authority has conducted extensive studies into the system of transportation, highway, and terminal facilities of the Port District and into methods of handling freight by the various railways, ferry companies, and other transportation agencies, and over the highway systems of both States entering said District, and into methods of remedying street, highway, and waterway congestion in connection with the existing and contemplated transportation, highway, and terminal facilities, and in accordance with such studies, the Port Authority has sought means of improving such systems and methods of freight handling and transportation facilities. The foregoing studies have been conducted in accordance with the provisions of the Compact of April 30, 1921, and of the Comprehensive Plan.

80. That the Commissioners of the Port Authority, in their annual reports, fully apprised the Legislatures and Governors of both the States of New York and New Jersey of the steps being taken, to remedy such conditions by means of an integrated and coordinated system of Union Inland Freight Terminals at strategic points
316 in the Port District and that the Governors and Legislatures of both states have assisted The Port of New York Authority in its studies in connection with this problem by state appropriations and by legislation which has empowered the Port Authority to construct such terminals on a self-liquidating basis as parts of the Comprehensive Plan.

81. The location and character of "Inland Terminal No. 1" was determined by the Port Authority after exhaustive research and studies and after a public hearing for the purpose of "adducing what facts, data, information, and opinions will be of aid in determining location, system, and character" of such a terminal building.

82. That such public hearing was attended by representatives of municipalities, railroads, shippers, consignees, warehouse men, civic and trade associations, property owners, and others, and that the opinions of all persons interested in the location and character of such a terminal were canvassed and secured by the Port Authority prior to its determination as to the location and character of Inland Terminal No. 1. A copy of the Stenographic Report of said public hearing, held on October 1, 1929, in the offices of the Port Authority, will be presented to the Board simultaneously with the presentation of this stipulation and shall be deemed part hereof, designated as Exhibit N.

83. That the Commissioners of the Port Authority, in their annual reports, fully apprised the Legislatures and Governors of both the States of New York and New Jersey of the character and
317 location of the Inland Terminal No. 1 prior to the construction thereof by the Port Authority.

84. That the resolutions of the Port Authority authorizing and approving the construction of Inland Terminal No. 1, including the utilization of the upper floors thereof for office, loft, and manufacturing purposes, were approved and ratified by the Governors of the States of New York and New Jersey. A copy of these resolutions, being resolutions of The Port of New York Authority adopted during the years 1926, 1927, 1929, 1930, 1931, and 1933, will be presented to the Board simultaneously with the presentation of this stipulation and shall be deemed a part hereof, designated as Exhibit O.

85. That the acts of the Port Authority in constructing the Inland Terminal No. 1, as it exists today, were approved and ratified by the Governors and Legislatures of the States of New York and New Jersey.

86. That on or about the 31st day of December, 1930, the Port Authority entered into a written agreement with eight trunkline railroads entering the Port of New York District whereby the Port

Authority agreed to erect an Inland Terminal Building and to lease substantially all of the street and basement floors of said buildings to said trunkline railroads for a term of five (5) years, with the privilege and option on the part of the railroads to renew said lease for nine successive periods of five (5) years each, for use as an

318 Inland Terminal Station for the transportation, assemblage, and the distribution of less-than-carload freight for each railroad. A copy of said agreement between the Port Authority and said trunkline railroads, dated December 31, 1930, will be presented to the Board simultaneously with the presentation of this stipulation and shall be deemed a part hereof, designated as Exhibit P.

That the upper floors of said buildings are constructed in such a manner as to be suitable for rental and occupancy for purposes of manufacturing, office and other industrial business uses, and that the entire building is fifteen stories in height, covers one city block, and is 800 feet in length and 200 feet in width. It is commonly known as the Port Authority Commerce Building, housing Inland Terminal No. 1.

The Port Authority has from time to time advertised the facilities of such building, as it has also advertised its bridges and tunnels, and there is attached hereto and shall be deemed a part hereof, a series of such building advertisements, and also of bridge and tunnel advertisements, designated as Exhibit Q.

87. That pursuant to said agreement of December 31, 1930, substantially all of the street and basement floors of said Inland Terminal Building are now actually leased to and in use by the aforesaid trunkline railroads as an Inland Terminal Station for the transportation, assemblage and the distribution of less-than-carload freight and that such Inland Terminal Station is commonly known as Inland Terminal No. 1.

88. That said Inland Terminal Station is not subdivided among the carriers but is a union station.

319 89. All income, revenues, and receipts of the Port Authority are derived from the following sources: (a) toll charges from bridges and tunnels; (b) rentals of Inland Terminal No. 1 paid by the railroad carriers; (c) rentals received from the upper floors of Inland Terminal No. 1; (d) rentals from real estate purchased for, but not yet devoted to, uses in connection with the Comprehensive Plan; (e) interest from investments of funds in various sinking, reserve, and other funds, in securities; (f) revenue from operation of bus line over Goethals Bridge; (g) interest on bank balances; (h) miscellaneous income including such items as rental of telephone ducts, sales of gasoline, towing charges, tire changes, and interest on bank balances, etc.; (i) advances by the States made under the provisions of the Compact and Comprehensive Plan until such time as the Port Authority is self-sustaining. All bridges and tunnels owned and operated by the Port Authority required at all times up

to and including the present time, the payment of a toll charge by vehicles using them.

90. During the year 1933, the Port Authority owned certain apartment houses and store buildings acquired in connection with the ultimate development of approaches to the George Washington Bridge and the new Midtown Hudson Tunnel, which buildings had not at that time been demolished for approach purposes and which were therefore under rental to the public as of December 31, 1933. These properties, acquired by the Port Authority during the years 1928 to

1935, inclusive, are the following:

- 320 134 Haven Avenue, 416 Ft. Washington Avenue, 700 West 179th Street, 701 West 178th Street, 703 West 178th Street, 706 West 179th Street, 709 West 178th Street, 710 West 179th Street, 714 West 179th Street, 618-20 West 179th Street, 1314-20 Riverside Terrace, 410 Ft. Washington Avenue, 426-28 West 37th Street, 427-9 West 38th Street, 431-33-35-37 West 38th Street, 430 West 39th Street, 431 West 39th Street, 438-40 West 39th Street, 428-30 West 40th Street, 429-31 West 40th Street, 422-26-28 West 41st Street, 429 West 41st Street, 504-6 Tenth Avenue, 514-16 Tenth Avenue, 425 West 34th Street, 429 West 34th Street, 423-25 West 35th Street, 429 West 35th Street, 433 West 35th Street, 428-30 West 36th Street, 424 West 37th Street, 447-53 West 38th Street, 427 West 40th Street, 435-3
- 321 West 40th Street, 552-54 West 40th Street (510-11 Avenue), 418-20 West 41st Street, 502 Tenth Avenue, Tenth Avenue between 39th & 40th Streets, 436 West 39th Street, 549-51 West 39th Street, 427 West 35th Street, 334-36 Park Avenue, Weehawken, N. J.

The total net loss derived from this source in 1933 was \$61,482.63; in 1932 the total net loss was \$47,356.91; and in 1931 there was a total net income from such rentals of \$36,115.61. This is interim management for the purpose of minimizing loss of capital investment prior to their utilization for bridge or tunnel purposes.

91. During the period from 1931 to 1933, inclusive, the Port Authority was the owner of miscellaneous securities as shown in a list which will be presented to the Board simultaneously with the presentation of this stipulation, and shall be deemed a part hereof, designated as Exhibit R.

92. The Port Authority had investments in the capital stock of ten wholly owned subsidiary corporations, aggregating \$10,000, as of December 31, 1933. All of these corporations, except one, had been formed for the purpose of acquiring title to properties required for Port Authority projects through secret, private purchase, on behalf of, but without revealing the identity of, the Port Authority, and have been used for no other purpose except as hereinafter stated. The other subsidiary corporation, The Galric Com-

322 pany, Inc., was organized and has acted only as the interim managing agent on behalf of the Port Authority in connection with the operation of certain properties originally acquired for the George Washington Bridge Approach, but not yet utilized

for that purpose. Randum Realty Corporation, one of the other subsidiaries, performs similar functions as those performed by The Galric Company in connection with the interim management of the properties acquired for the Midtown Hudson Tunnel.

93. The Port Authority has made efforts to increase the traffic through, and the use of, its bridges and tunnels by publishing and displaying advertisements of these facilities in magazines, trade journals, and in public places. The respondent will offer in evidence a copy of certain recommendations prepared by the staff of the Port Authority (which have been voluntarily furnished to the respondent by the petitioners, at respondent's request) entitled "Traffic Promotion Progress for 1933" and "Traffic Promotion Progress for 1934." The petitioners contest the materiality and the competency of the offers of these exhibits in evidence and wish to specifically record their objection to them in this paragraph. These exhibits are included herein as Exhibit S.

94. A few of the factors with respect to the relationship of the Port Authority with the two States of New York and New Jersey are in part set forth, under the Compact and Statutes of the two States, as follows:

(a) The functions of the Port Authority are such as are
323 conferred by the Compact and the Statutes of the two States and are exercised by twelve Commissioners, six resident voters each from the States of New York and New Jersey, who are chosen as the Legislatures of each shall determine.

The Commissioners from the State of New York may be removed only upon charges and after a hearing by the Governor. The Commissioners from the State of New Jersey may be removed only upon charges and after a hearing by the Senate of the State of New Jersey. (Compact, Article IV; Chapter 422, Laws of New York, 1930; Chapter 245, Laws of New Jersey, 1930.)

(b) No action of the Commissioners is binding unless approved by a majority of the Commissioners from each State. The Governor of each State has a veto power over the acts of each Commissioner from his State and no action of any Commissioner has force or effect until a specified period after the minutes of each meeting have been transmitted to the Governor of his State. (Compact, Article XVI; Chapter 333, Laws of New Jersey, 1927; Chapter 700, Laws of New York, 1927.)

(c) Under the provisions of Chapter 222, Laws of New York, 1928, employees who transfer to Port Authority service from State service and who are already members of the State Retirement System may continue in that System after such transfer to Port Authority service. Under the provisions of Chapter 259, Laws of New York, 1935, all other employees of the Port Authority are permitted to join the New York State Retirement System.

324 (d) The Commissioners of the Port Authority subscribe to oaths of office. The respondent denies that there is any statutory authority requiring the taking of such oaths by Commis-

sioners of the Port Authority. The petitioner contends that the taking and filing of such oaths are required by law.

(e) Reports on all activities of the Port Authority are required to be and are submitted to the Legislatures and Governors of both States annually and at other times when requested.

(f) The Commissioners constitute a board for the purpose of doing business and may adopt suitable by-laws for its management. (Compact, Article V.)

(g) All laws of both states vesting jurisdiction or control in the public service commission, public utilities commission, or other like body within each state apply to railroads and to any transportation, terminal, or other facilities owned, operated, leased, or constructed by the Port Authority with the same force and effect as if such railroad or transportation, terminal, or other facility were owned, leased, operated, or constructed by a private corporation. (Compact, Article VIII.)

(h) Until revenues from the operations of the Port Authority are adequate to meet all expenditures, the legislatures of the two states are obligated to appropriate, in equal amounts, annually, for the salaries, office, and other administrative expenses, sums as recommended by the Port Authority and approved by the Governors of the two states up to \$100,000 in any one year. The Port Authority is prohibited from incurring any such obligation for salaries, office, and other administrative expenses prior to the making of appropriations adequate to meet same by the two legislatures. (Compact, Article XV.)

95. Under the Compact and statutes of the two states, the Port Authority, among others, is given the following powers, privileges, and jurisdiction, and is subject to the following limitations:

(a) Power to make suitable rules and regulations not inconsistent with the Constitution of the United States or of either State and subject to the exercise of the power of Congress for the improvement of the conduct of navigation and commerce within the Port District which, when concurred in or authorized by the Legislature of both States, shall be binding and effective. (Compact, Article XVIII.)

(b) Power to make vehicular rules and regulations, with respect to the bridges, tunnels, and transportation facilities of the Port Authority, its police force being designated as peace officers of both states; to enforce, through actions in the State Courts, such regulations, as well as regulations adopted directly by legislation of the States. The violations themselves are incorporated as an integral part of the Criminal Laws of the States of New York and New Jersey; penalties are prescribed therefor; and the inferior criminal courts of the states are given jurisdiction to enforce penalties. (Chapter 388, Laws of New York, 1928; Chapter 113, Laws of New Jersey, 1932; Chapter 599, Laws of New York, 1932; Chapter 146, Laws of New Jersey, 1932; Chapter 251, Laws of New York, 1934; Chapter 262, Laws of New York, 1934.)

(c) Power and authority to fix tolls and charges for the use of all facilities. (Comprehensive Plan, Section VIII; Chapter 4, Laws of New Jersey, 1931; Chapter 47, Laws of New York, 1931; and all Bridge Statutes.)

(d) Bonds and certain obligations of the Port Authority are by legislative enactment made legal for investment by fiduciaries in both states. (Chapter 57, Laws of New Jersey, 1925; Chapter 210, Laws of New York, 1925; Chapter 761, Laws of New York, 1926; Chapter 3, Laws of New Jersey, 1927; Chapter 300, Laws of New York, 1927; Chapter 486, Laws of New York, 1928; Chapter 114, Laws of New Jersey, 1930; Chapter 4, Laws of New Jersey, 1931; Chapter 46, Laws of New York, 1931; Chapter 47, Laws of New York, 1931.)

(e) In order to protect public funds deposited by the Port Authority, the statutes of both States provide that all banks and other financial institutions are authorized to give to the Port Authority undertakings, with such sureties as the Port Authority shall approve to secure the deposited funds of the Port Authority, or in lieu of such sureties to deposit with the Port Authority as collateral, such securities as the Port Authority may approve. (Chapter 442, Laws of New York, 1933; Chapter 150, Laws of New Jersey, 1933.)

(f) The Port Authority is authorized to make suitable rules and regulations for the improvement of the conduct of navigation and commerce in the Port of New York, which must be approved by the legislatures of both States, and the States are obligated to provide penalties for violations of such rules or regulations or of any order issued by the Port Authority within its jurisdiction. (Compact, Articles XVIII and XIX.)

(g) Power to hold investigations in connection with matters pertaining to the planning and developing of the Port of New York, and for such purposes jurisdiction "of any and all persons," residing in, or owning property within the State, and power to issue subpoenas in connection with such jurisdiction. For failure to comply with such Port Authority subpoenas, the Supreme Court may, upon application of the Port Authority, commit such person to jail, or otherwise punish for contempt. (Chapter 623, Laws of New York, 1924.)

(h) Orders of the Port Authority with respect to the regulation or control of port affairs within its jurisdiction are enforceable by mandamus or injunction, or any other relief appropriate to the case. Actions and proceedings involving the Port Authority are entitled to a preference "over all civil cases." (Chapter 623, Laws of New York, 1924.)

328 (i) The powers of the Port Authority with respect to the construction of public highways within the Port District, in connection with the execution of the Comprehensive Plan, are such as are set forth by the Compact, Comprehensive Plan, and Statutes thereafter adopted by the two States.

(j) The Port Authority has, among others, certain powers enumerated by Article VI of the Compact.

(k) In addition to the powers conferred by the Compact, the Port Authority has such additional powers and duties as have been, or may hereafter be delegated to or imposed upon it by the action of the legislature of either State, concurred in by the legislature of the other. The Port Authority can not pledge the credit of either State except by and with the authority of the legislature thereof. (Compact, Article VII.)

(l) The Compact provides that nothing therein contained shall impair the powers of any municipality to develop and improve port and terminal facilities. (Compact, Article IX.)

(m) The Compact directs the Port Authority to make plans, from time to time, for the development of the Port District, supplementary to or amendatory of any plan theretofore adopted, and when such plans are duly approved by the legislatures of the two States, the Compact provides that they shall be binding upon both States with the same force and effect as if incorporated in the Compact itself. (Compact, Article XI.)

329 (n) The Port Authority may from time to time make recommendations to the legislatures of the two States or to the Congress of the United States, based upon study and analysis, for the better conduct of the commerce passing in and through the Port of New York, the increase and improvement of transportation and terminal facilities therein, and the more economical and expeditious handling of such commerce. (Compact, Article XII.)

(o) The Port Authority may petition any interstate commerce commission (or like body), public service commission, public utility commission (or like body), or any other federal, municipal, state, or local authority, administrative, judicial, or legislative, having jurisdiction in the premises, for the adoption and execution of any physical improvement, change in method, rate of transportation, system of handling freight, warehousing, docking, lightering, or transfer of freight, which, in the opinion of the Port Authority may be designed to improve or better the handling of commerce in and through said District, or improve terminal and transportation facilities therein. It may intervene in any proceeding affecting the commerce of the Port. (Compact, Article XIII.)

(p) The States of New York and New Jersey have reserved the right to add to, modify, or change any part of the Comprehensive Plan, with the concurrence of the other. (Comprehensive Plan, Section 7.)

330 (q) The Port Authority is authorized and directed by the two States to proceed with the development of the Port of New York in accordance with the Comprehensive Plan as rapidly as may be economically practicable, and is vested with all necessary and appropriate powers not inconsistent with the Constitution of the United States or of either State, to effectuate the same, except the power to levy taxes and assessments.

96. In connection with the construction of Inland Terminal No. 1, as a part of the Comprehensive Plan, the Port Authority did condemn and take through legal proceedings, a number of parcels of improved real estate in the Borough of Manhattan. The power of the Port Authority so to do was upheld by the Special Term of the Supreme Court of the State of New York held in and for the County of New York in the case of *The Port Authority v. Lattin*, N. Y. L. J. December 3, 1930.

97. By special statutes of the States of New York and New Jersey, it is provided that the Port Authority shall be exempt from state and municipal taxation with respect to all property of the Port Authority. The statutes of the two states enacting the Comprehensive Plan, provide that "the bonds or other securities issued by the Port Authority shall at all times be free from taxation by either state."

98. That the following are among the facts with respect to the character and activities of the Port Authority.

(a) There are no stock and no stockholders; the Port Authority, although in corporate form being wholly owned and controlled by two sovereign states, and not by any private persons or corporations;

(b) All projects are operated in the interest of the public and no profits inure to the benefit of private persons.

(d) The States of New York and New Jersey obligated themselves to the payment of the administrative expenses of the Port Authority, each in the amount of One Hundred Thousand (\$100,000) Dollars per year, until the revenues of the Port Authority were adequate to meet its expenditures. (Compact, Article XV.)

(e) The Congress of the United States has itself declared (Public Resolution 66-67th Congress—H. J. Res. 337) that the activities of the Port Authority under the Comprehensive Plan "will the better promote and facilitate commerce between the States and between the States and foreign nations and provide better and cheaper transportation of property and aid in providing better postal, military, and other services of value to the Nation."

(f) Certain statutes of the States of New York and New Jersey have stated with respect to the various projects of the Port Authority that they are "in all respects for the benefit of the people of the two States, for the increase of their commerce and prosperity and for the improvement of their health and living conditions, and the

332 Port Authority shall be regarded as performing a governmental function in undertaking the said construction, maintenance, and operation and in carrying out the provisions of law relating to the said (bridges and tunnels) and shall be required to pay no taxes or assessments upon any of the property acquired by it for the construction, operation, and maintenance of such (bridges and tunnels)." (Chapter 37, Laws of New Jersey, 1925, Section 7; Chapter 210, Laws of New York, 1925, Section 7; Chapter 6, Laws of New Jersey, 1926, Section 7; Chapter 761, Laws of New York, 1926, Section 7; Chapter 3, Laws of New Jersey, 1927, Section 7;

Chapter 300, Laws of New York, 1927, Section 7; Chapter 4, Laws of New Jersey, 1931, Section 14; Chapter 47, Laws of New York, 1931, Section 14.)

The following data applies to the circumstances of the employment of Montgomery B. Case during the year 1931, the year covered by the petition filed with the Board of Tax Appeals on April 28, 1934, and assigned Docket No. 75816.

99. Montgomery B. Case was employed by The Port of New York Authority pursuant to a resolution of the Commissioners of the Port Authority dated March 3, 1927, as Engineer of Construction at a salary of \$12,000 per year. Prior to the year 1931, Mr. Case's salary had been increased to \$16,000 per year. Said employment was to take effect and did take effect on April 1, 1927, and continued until Mr. Case left the employ of the Port Authority on December 31, 1932.

333 100. Upon entering the employ of the Port Authority Mr. Case took the following oath:

"I, Montgomery B. Case, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of Engineer of Construction of The Port of New York Authority according to the best of my ability."

101. It was understood that the petitioner was to be at the offices of the Port Authority in New York City on each and every working day from 9 A. M. to 5 P. M. and from 9 A. M. to 12 Noon on Saturday, the normal working hours for all Port Authority employees, except, of course, on such occasions as his Port Authority duties might require his presence elsewhere. It was agreed that although generally the petitioner would be required to devote only the above mentioned hours to his Port Authority duties he would, whenever necessary, devote such extra time to his duties as might be required without extra compensation.

102. As Engineer of Construction Mr. Case was the executive head of the Construction Division of the Port Authority's Engineering Department and had direct charge of all construction forces working on the George Washington Bridge, Bayonne Bridge, Holland Tunnel, and Midtown Hudson Tunnel during the year 1931. His duties were prescribed by the Chief Engineer of the Port Authority to whom Mr. Case was required to and did submit weekly
334 reports, and from time to time he was required to make such further reports as the Chief Engineer required.

103. In all of his duties Mr. Case was under the immediate and direct supervision of the Chief Engineer of the Port Authority and on occasions when Mr. Case differed with the Chief Engineer on matters involving construction or on other matters within the scope of his employment he was directed to proceed in accordance with the direction of the Chief Engineer.

104. Mr. Case was furnished with an office by the Port Authority in the Engineering Department of the Port Authority's general

offices and he was supplied with all necessary supplies and materials by the Port Authority. His office force, engineering assistants, draftsmen, and stenographers were supplied by the Port Authority and were regular employees on the payroll of the Port Authority. Traveling expenses and all other expenses incurred by him in connection with the performance of his duties were paid by the Port Authority.

105. During the year 1931 Mr. Case had no outside office and no outside business associations or connections of any kind whatsoever. During said year he did no engineering work other than that performed in his capacity of Engineer of Construction for the Port Authority and received no outside income except income on securities held or owned by him during that year.

106. Mr. Case's name appeared on the payroll of the Port Authority and he was required to sign that payroll as were all employees of the Port Authority.

The following data applies to the circumstances of the employment of E. Morgan Barradale during the year 1933, the year covered by the petition filed with the Board of Tax Appeals on September 19, 1934, and assigned Docket No. 77376.

107. E. Morgan Barradale was a member of the staff of the New York-New Jersey Interstate Bridge and Tunnel Commission from 1919, the date of its organization, down to the time of the merger of that Commission with The Port of New York Authority on May 8, 1930. He has continued as an employee and a member of the staff of The Port of New York Authority from the date of the merger, with the title of Superintendent of Tunnel Operations, down to the present date. During the year 1933, Mr. Barradale received from the Port Authority in salary the sum of \$10,174.97.

108. As an employee of the New York-New Jersey Bridge and Tunnel Commission, Mr. Barradale had taken an oath of office.

109. It was understood that the petitioner was to be at the administrative offices of the Holland Tunnel in New York City on each and every working day from 9 A. M. to 5 P. M. and from 9 A. M. to 12 Noon on Saturday, the normal working hours for

all Port Authority employees except, of course, on such occasions as his Port Authority duties might require his presence elsewhere. It was agreed that although generally the petitioner would be required to devote only the above mentioned hours to his Port Authority duties he would, whenever necessary, devote such extra time to his duties as might be required without any extra compensation, and, as a matter of fact, because operations in the Holland Tunnel and other Port Authority facilities are twenty-four hour operations, it would be necessary for Mr. Barradale throughout his period of employment to devote a large amount of additional time to his work.

110. As Superintendent of Tunnel Operations, Mr. Barradale is in charge of the operation and maintenance of the Holland Tunnel

and had direct charge of all Port Authority employees engaged in tunnel operations during the year 1933. His duties were prescribed by the Assistant General Manager in Charge of Operations to whom Mr. Barradale was required to submit daily, weekly, monthly, and annual reports, and from time to time he was required to make such further reports as the Assistant General Manager in Charge of Operations required.

111. Furthermore, Mr. Barradale was required to and did submit a monthly time report showing the number of hours worked on each and every day during the month, the number of hours spent in connection with each of the several activities undertaken by him in the course of his employment, and the number of hours worked each day over and above the seven standard hours.

337 112. In all of his duties Mr. Barradale was under the immediate and direct supervision of the Assistant General Manager in Charge of Operations and on occasions when Mr. Barradale differed with the Assistant General Manager on matters within the scope of his duties he was directed to proceed in accordance with the direction of the Assistant General Manager.

113. Mr. Barradale was furnished with an office by the Port Authority in the Administration Building of the Holland Tunnel in New York City and was supplied with all necessary supplies and materials by the Port Authority. His office force, stenographers, and other assistants were supplied by the Port Authority and were regular employees on the payroll of the Port Authority. Traveling expenses and all other expenses incurred by him in connection with the performance of his duties were paid by the Port Authority.

114. Mr. Barradale had no outside business connection during the year 1933 except for his office and position as Director and President of the South Orange Building and Loan Association. During the year 1933 Mr. Barradale received no outside income except fees from said South Orange Building and Loan Association and income derived from rents or interest on securities held or owned by him during that year.

115. Mr. Barradale's name appeared on the payroll of the Port Authority and he was required to sign that payroll as were all employees of the Port Authority.

338 The following data applies to the circumstances of the employment of Philip L. Gerhardt during the year 1933, the year covered by the petition filed with the Board of Tax Appeals on September 19, 1934, and assigned Docket No. 77375.

116. Mr. Gerhardt was employed by the Port Authority pursuant to a resolution of the Commissioners of the Port Authority dated May 7, 1931, with the title of Industrial Consultant at a salary of \$8,500 a year. During the year 1933, however, Mr. Gerhardt received a salary of \$8,137.50, as result of a salary reduction applicable to practically all Port Authority employees during that year. Mr. Gerhardt's employment was effective May 16, 1931, and has continued to the present date.

117. On entering the Port Authority's employ Mr. Gerhardt took the following oath:

"I, Philip L. Gerhardt, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of Industrial Consultant of The Port of New York Authority according to the best of my ability."

118. It was understood that Mr. Gerhardt was to be at the office of the Port Authority in New York City on each and every working day from 9 A. M. to 5 P. M. and from 9 A. M. to 12 Noon on 339 Saturday, the normal working hours of all Port Authority employees, except, of course, on such occasions as his Port Authority duties might require his presence elsewhere. It was agreed that although generally the petitioner would be required to devote only the above mentioned hours to his Port Authority duties he would, whenever necessary, devote such extra time to his duties as might be required, without any extra compensation. As a matter of fact, Mr. Gerhardt's duties in connection with the operation of Inland Terminal No. 1 constantly required his presence at the office of the Port Authority at hours other than and in excess of the normal working hours for other Port Authority employees.

119. As Industrial Consultant Mr. Gerhardt's duties as assigned for the year 1933 involved the design of the building from an operations standpoint and the general supervision of the operation and rental of Inland Terminal No. 1. His duties were prescribed by the General Manager of the Port Authority to whom Mr. Gerhardt was required to submit such reports on matters of operation and rental as the General Manager may, from time to time, require. In all of his duties Mr. Gerhardt was under the immediate and direct supervision of the General Manager of the Port Authority, and on occasions when Mr. Gerhardt differed with the General Manager on matters involving operations or rental or on other matters within the scope of his employment, he was directed to proceed in accordance with the direction of the General Manager.

120. Mr. Gerhardt was required to submit monthly time 340 reports itemizing the number of hours worked in each day and describing the work performed, the number of hours spent in connection with each type of work and the number of hours worked each day over and above the seven standard hours. These time reports were approved over the signature of the Real Estate Agent of the Port Authority, in whose general offices Mr. Gerhardt's office is located.

121. Mr. Gerhardt was furnished with an office by the Port Authority in the Port Authority's general offices and he was supplied with all necessary supplies and materials by the Port Authority. His office force, stenographers, and the personnel of his staff engaged in the management, operation, and rental of Inland Terminal No. 1, were supplied by the Port Authority and were regular employees on the payroll of the Port Authority. Traveling expenses and all other

expenses incurred by him in connection with the performance of his duties were paid by the Port Authority.

122. Mr. Gerhardt had no outside office and no outside business association or connection of any kind whatsoever during the year 1933. He received no outside income during the year 1933 except a small amount of bank interest.

123. Mr. Gerhardt's name appeared on the payroll of the Port Authority and he was required to sign that payroll, as were all employees of the Port Authority.

(Sgd.) JULIUS HENRY COHEN,
Counsel for Petitioners.

(Sgd.) HERMAN OLIPHANT,
General Counsel for the Department of the Treasury.

Dated January 21, 1936.

341 *List of exhibits to stipulation of facts*

| <i>Exhibits</i> | <i>Contents</i> | <i>Paragraph</i> |
|-----------------|---|------------------|
| A— | Preliminary Joint Report of the New York-New Jersey Port and Harbor Development Commission----- | 1 |
| B— | Joint Report with Comprehensive Plan and Recommendations----- | 1 |
| C— | Public Papers of Governor Alfred E. Smith—1920----- | 2 |
| D— | Public Papers of Governor Miller—1921----- | 2 |
| E— | Port Authority Statutes—Sixth Edition and Cumulative Supplement to June 1, 1935----- | 23-2 |
| F— | Report with Plan for the Comprehensive Development of the Port of New York----- | 2 |
| G— | Complete Series of the Annual Reports of the Port Authority (1921 to 1934, inclusive)----- | 3 |
| H— | Port Authority Statutes (Supplement) Fifth Edition----- | 6 |
| I— | Report of New York Interstate Bridge & Tunnel Commission to the Legislature of the State of New York, 1919----- | 6 |
| J— | Report of New Jersey Interstate Bridge & Tunnel Commission to the Legislature of the State of New Jersey, 1919----- | 6 |
| K— | Distribution of Port Authority Revenues----- | |
| 342 L— | Loan Agreement between United States of American and Port Authority----- | |
| M— | Specimen copies of all bonds (bound in pamphlet)----- | |
| N— | Stenographic Report of Public Hearing held October 1, 1929, at Port Authority offices----- | |
| O— | Copy of Resolutions of the Port Authority authorizing and approving the construction of Inland Terminal No. 1----- | |
| P— | Agreement between Port Authority and Trunkline Railroads, dated December 31, 1930----- | |
| Q— | Series of Building Advertisements----- | |
| R— | List of Miscellaneous Securities----- | |
| S— | Traffic Promotion Reports----- | |

342 *Modification of stipulation of facts*

Counsel for the Commissioner of Internal Revenue requested be released from Paragraph 98 (a) of the printed Stipulation Facts. With the consent of counsel for the taxpayers, the text this Paragraph, which originally read: "There are no stock and stockholders; the Port Authority, although in corporate form, be

wholly owned and controlled by two sovereign states, and not by any private persons or corporation," was modified to read: "There is no stock and are no stockholders, the Port Authority not being owned or controlled by any private persons or corporations." Counsel for the taxpayers stated that he would not undertake specifically
 343 to prove the portion of that Paragraph of the Stipulation released, since it was the petitioners' position that no judicial tribunal could find otherwise than that the two states, by virtue of the Compact creating the Port Authority, own and control the Port Authority.

Stipulation re exhibit L to stipulation of facts

By agreement of counsel for all parties it was stipulated that shortly prior to February 1, 1936, the Loan Agreement of September 1, 1933, between the United States acting through the Federal Emergency Administration of Public Works and the Port Authority, and the Supplemental Loan Agreement of March 18, 1935, between the same parties, which are designated "Exhibit L" to the Stipulation of Facts, were canceled, and in lieu of the loans provided to be made thereunder a grant of \$4,780,000.00 to the Port Authority has been made by the Public Works Administration.

Petitioners then rested their case.

Counsel for the petitioners reserved, however, the further right to introduce either a stipulation or testimony with regard to the facts as to the employment of the petitioners Wilson and Mulcahy, which were not included in the printed Stipulation of Facts.

Recital as to respondent's exhibits A, B, and C

There was received in evidence, subject to objection by counsel for the taxpayers upon the ground of irrelevancy and immateriality, the following documents designated Respondent's Exhibits A, B, and C, respectively:

Respondent's Exhibit A consisted of a copy of a letter from Julius Henry Cohen, General Counsel for the Port Authority, to Hon. E. H. Outerbridge, Chairman of the Commissioners of the Port Authority, dated April 26, 1921.

344 Respondent's Exhibit B consisted of a copy of a letter from W. G. Besler, President and General Manager of the Central Railroad of New Jersey, to Hon. E. H. Outerbridge, Chairman of the Commissioners of the Port Authority, dated September 15, 1921.

Respondent's Exhibit C consisted of a copy of an opinion of the Attorney General of the State of New York, Charles D. Newton, addressed to Hon. James H. Wendell, State Controller, dated May 12, 1921.

These exhibits are not incorporated herein, but are included in the record as physical exhibits.

Stipulation re opposition to Port Authority's proposed program

By agreement of counsel it was stipulated that during the early years of the Port Authority, to wit, during 1921 to 1924 or thereabouts, there was substantial opposition to one or more of the details of the Port Authority's proposed program, and that this opposition came to some extent from some of the trunk line railroads entering the Port District, as well as from civic bodies within the Port District.

Counsel for the taxpayers accepted this Stipulation for the petitioners, only for the purpose of expediting the present record, and without prejudice to any other case in which the same issue of fact may become relevant or material.

Mr. BRABSON. I told Mr. Cohen that I would offer in evidence a copy of the proposed agreement between the Port of New York Authority and the City of New York, which was the agreement which formed the basis of the Bush Terminal suit, and I offer that at this time—a copy of it—in evidence.

Mr. COHEN. We object to it, sir, upon the grounds that it is immaterial and irrelevant. It was never executed. Your

Honor will find in the judicial opinions which we have handed up to you, photostatic copies of the decision by Mr. Justice Frankenthaler in the Bush Terminal Company against The City of New York, and I am sure, if your Honor will read that opinion, you will see that the agreement itself adds nothing to this record of any benefit or any value at all. This is a proposed agreement made pursuant to a statute which authorized us to pay, in lieu of taxes, to the municipality, the same sum that was paid.

The MEMBER. You object to it because it is not an agreement?

Mr. COHEN. Upon that ground, and also upon the ground that even if it were an agreement it has no bearing upon the issues here.

The MEMBER. I don't see how that would apply, if it were something that it isn't. Isn't that a sound suggestion?

Mr. BRABSON. I don't think so, your Honor.

The MEMBER. A proposed agreement?

Mr. BRABSON. If your Honor please, the taxpayers' counsel has stated here in open court that this is a copy of a proposed agreement between the City of New York and the Port of New York Authority. Now, it is a fact that they have also stated that they don't object to having any fact in here, in the record, which will throw any light on this case. Now, we offer this as showing that the Port of New York Authority did not have any exemption for the purposes of taxation in the Municipality of New York, and for that reason they found it necessary to apply to the legislatures of the

346 States of New York and New Jersey, or, rather, they found it necessary to apply to the legislature of the State of New York, and obtain permission to execute a contract of that sort, and

this is what they attempted to execute, and this is what the Bush Terminal suit, to which counsel has himself referred and brought into this record—is the basis of that suit.

Now, in order to clarify the issues in that suit, so that your Honor can see what it is all about, I think the subject matter of the suit which was brought into the record by counsel, ought to be put in evidence.

The MEMBER. The objection is sustained.

Mr. BRABSON. The record will show an exception, please.

Counsel for the petitioners then submitted to counsel for the Commissioner of Internal Revenue a proposed stipulation with regard to the facts as to the employment of petitioners Wilson and Mulcahy. Counsel for the Commissioner stated that he could not agree to the stipulation on the ground that it did not contain a number of facts he desired to have in evidence as to their functions and duties. He stated that those facts would be developed from an examination of the witnesses.

Whereupon Philip L. Gerhardt summoned as a witness on behalf of the respondent, being duly sworn, testified as follows:

I am one of the taxpayers in this series of consolidated cases.

(The facts as to Mr. Gerhardt's residence and employment are set forth in the Stipulation of Facts, paragraphs 1, 2, and 116 to 123, inclusive.)

347 I have certain duties as an employee of the Port Authority in connection with the management and operation of the Inland Terminal or the Commerce Building, but I did not have anything to do with the acquisition of the properties by the Port Authority which are now occupied by the Commerce Building, nor did I have anything to do with the selection of the site for that building. I am not informed who selected the site for the building, inasmuch as I was not an employee of the Port Authority at that time.

When I joined the staff of the Port Authority the building was not completed, being still in the design stage. I had nothing to do with the designing of it. I did have something to do with the space to be allocated to the various facilities in the building. From the standpoint of coordination of the operation of the Inland Terminal portion of the building, my employment had to do in part with planning how it would fit in with the design of the building.

The railroads which use the terminal facilities in the Commerce Building are the Baltimore & Ohio; the Delaware, Lackawanna & Western; Pennsylvania; New York, New Haven & Hartford; New York Central; Lehigh Valley; Erie Railroad; and the Central Railroad of New Jersey. This includes all of the trunk line railroads entering New York City or having facilities on the western shore of the Hudson River. The West Shore Railroad does not use the Inland Terminal except by its own shippers in connection with the

New York Central. That is, the West Shore does not use it except by its control of the New York Central and routing of the West Shore freight which comes into that station. The freight of the West Shore does not come into the Inland Terminal. The West Shore is not a trunk line.

The Long Island Railroad used the terminal in connection with the Pennsylvania. It is not a party to the contract of lease with the Port Authority. It is not a trunk line. There is one other railroad in the Port district which does not use the Inland Terminal, and that is the New York, Ontario & Western, which is not a trunk line.

I am familiar with the design and construction of the Commerce Building. There are approximately 2,373,140 square feet of floor space in the building, of which, excluding the Port Authority's office space, 50,000 square feet are devoted to general office space, about 1,750,000 square feet are devoted to loft and manufacturing purposes, and between 250,000 and 275,000 square feet are devoted to freight terminal purposes. I do not challenge the statement that the Commerce Building is one of the largest buildings of its kind in the world. It has 15 floors, a basement, and a subbasement. Thirteen floors are devoted to commercial purposes. Two floors, consisting of a street level and a basement are devoted to the Inland Terminal. The second floor of the building has been devoted recently for exhibit purposes; that is, for the purposes of trade and industrial work. That floor is known as Commerce Hall. Commerce Hall is leased by the Port Authority in the interest of creating new business by means of industrial or trade expositions.

Part of the street level floor is also used as store areas, and is devoted to conveniences for the building. There is a barber shop, a beauty shop, a cafeteria, a United States Post Office, and a bank. All of those facilities are occupied and operated by outside concerns except, of course, the Post Office. They all pay rents to the Port Authority for the space they occupy. These store areas occupy about 5 per cent of the first floor. The remainder of the floor, approximately 95 per cent, is occupied by Inland Terminal No. 1.

The gross tonnage capacity per annum of Inland Terminal No. 1 is calculated at 680,000 tons. In the first year's operation the freight handled was approximately 40,000 tons. There was a substantial increase in the second year's operation, about 72 per cent increase over the first year of operation. I do not know what percentage of the gross income of the Commerce Building was derived from the upper stories, and what percentage from the Inland Terminal portion of the building during the first and second years of operation, but that information is shown in the Port Authority's annual reports. The revenue from the non-terminal part of the building annually produces more income than the Inland Terminal portion.

I did not have anything to do with the employment of Brown, Wheelock, Harris & Company as agents for the Commerce Building.

but I do know that they were so employed as agents for the building, and, I know as a fact that they actually solicited business to come into the Commerce Building. I cannot say whether they solicited tenants from the Bush Terminal Company's buildings or not. I do know that there are tenants now in the Commerce Building who formerly occupied space in the Bush Terminal Buildings.

(Mr. Gerhardt's testimony above with regard to the Bush Terminal Company and its tenants was admitted over the objection of counsel for the petitioners on the ground that it was immaterial and irrelevant, and a like objection was made to all such testimony with regard to the Bush Terminal Company tenants, which follows.)

These tenants were the New York Blanking Company and Wheel Parts & Manufacturing Company. They were not brought into the building as tenants through the solicitation of Brown, Wheelock, Harris & Company.

I know a Mr. Andre Benel, who is a Vice President of Brown, Wheelock, Harris & Company, and I know that in that capacity he solicited tenants for the building. There was an agreement between the Port Authority and Brown, Wheelock, Harris & Company, of which Mr. Benel is a Vice President. I do not know where Mr. Benel solicited tenants from, since the firm was an independent brokerage concern with many men working for it, and I would have no knowledge of what those brokers might or might not do.

I did have incidentally some connection with tenants coming into the building. I had something to do with the coming of the United Cigar Stores Co. into the building. I did not actively solicit their business, no member of the Port Authority, to my knowledge, did solicit their business. As I recall it the contact with United Cigar Stores Co. was made through some broker in Chicago whom Mr. Morrow had requested to ascertain what locations they could get in New York. Mr. Morrow was then President of both the Gold Dust Corporation and United Cigar Stores Co., or in some financial relationship that controlled both companies. According to my recollection they came to our office. At that time the United Cigar Stores Co. had space in the Bush Terminal Building. The company did not take space in the Commerce Building and I cannot tell why it did not.

(The above line of testimony with regard to the United Cigar Stores was admitted over the objection and exception of counsel for the petitioners.)

The Port Authority has not offered free rent to tenants to come into its building. They have made a sliding scale of rents where heavy moving expenses were involved, but no tenant was actually given free rent. The entire transaction, in any case, simply took everything into consideration. In establishing a sliding scale of rentals, the Port Authority did exactly as anyone would do who was attempting to meet the depressed conditions. The rentals offered in the Inland Terminal Building were higher than those offered in

the ordinary loft building in this City. I do not know of a single specific case of a single tenant who was given a concession in rent for a period of time at the beginning of their lease in order to induce them to take a longer lease in the building. But such concessions were given in order to consummate an agreement, taking into question all the considerations with which the tenant was
 352 faced. Tenants with whom such arrangements were made included the New York Blanking Corporation, Wheel Parts, and Nestle LeMur, all of whom moved into the building before it was fully completed. The concession made to these companies was to permit them to occupy their premises until the building was finished and at least in an operable condition, and probable for two to four months thereafter. The Port Authority has assumed absolutely no old leases of any tenant whatsoever.

F. W. Woolworth & Company occupied space consisting of one floor in the Commerce Building. The nature of their business is stock distribution and warehousing, together with executive offices and buyers' sampling room. In the course of their stock distribution they store stocks of goods there. The fourth floor of the building immediately above the Woolworth Company is occupied by the Malina Company, yarn converters. It is a manufacturing business or process. The majority of the fifth floor is occupied by Inter-State Department Stores. They use the space for stock distribution, buying, and executive offices. The remaining floors of the building are occupied by like tenants in substantially like capacities, except the fifteenth floor.

I know what the business of the Bush Terminal Company is. (Mr. Gerhard's following testimony with regard to the Bush Terminal Company and similar companies, and the nature of their business, was admitted over the objection of counsel for the petitioners as irrelevant and immaterial.) They are shippers. They operate warehouses as distinguished from buildings used for stock distribution.
 353 They operate railroad yards, car floats, tugs and trucking operations. I think they have 126 warehouses in the Port district, all of them located in South Brooklyn. None of their warehouses are located on Manhattan Island.

I also know of the New York Dock Company and of their functions and operations. They operate the same sort of facilities as the Bush Terminal Company, that is, warehouses as distinguished from buildings used for stock distribution. They operate piers, railroad yards, car floats, and general terminal or marine terminal operations in New York Harbor. It is a private corporation. The New York Dock Company has no storage buildings or warehouse buildings on Manhattan Island that I know of. There is a building on Eleventh Avenue at 26th Street, known as the Starret Lehigh Building owned, I believe, by the Pioneer Land Company. Their business is the rental of loft space. I do not know what distance that building is from the Port Authority Commerce Building. The

Commerce Building is at Eighth Avenue and 15th Street while the Starret Lehigh Building is at Eleventh Avenue and 26th Street. That building does not do a similar business to that of the Port Authority Commerce Building. The Commerce Building rents commercial areas as distinguished from loft space. Loft space is bare space in a poor location with a minimum of facilities. There is a considerable distinction between that type of space and the space rented by the Port Authority. The buildings are not comparable

in their construction or location, nor are they comparable in the sense that they were designed to house the same industries.

There is no competition between them. However, I should not want to be as broad as to say that there is no competition between the Commerce Building and any other building in New York City. It is not in competition with the Starret Lehigh Building, with Bush Terminal Company, with the New York Dock Company, nor with any of the buildings of the members of the Warehousemen's Association. Some competition has developed by reason of the growth and development of Fourth Avenue because that section has been cleaned up. I should say more specifically that any building on Fourth Avenue from 23rd Street probably to 34th Street which is used for office purposes or sales purposes is in competition with our building.

The Commerce Building is a peculiar building; that is its value. There is a certain bringing together of operations. Where there is a certain need for the bringing together of operations in that respect, if a man can bring those together with his executive offices and with his manufacturing, then he can use our building. There is no other building in New York for the class of people who have looked at our building that is adaptable for them to do what they can do in our building. That is why I take the stand that we are not in competition. I do not mean that there are no other buildings on Manhattan where prospective tenants can combine executive offices with loft space; I mean that there is no building on Manhattan or any place else in the Port of New York that I know of where the Woolworth Company could put their whole operations on one floor.

I am trying to make the distinction for you.

I am not informed whether the several trunkline railroads still operate all of their pier stations on Manhattan. Some have closed up. Some have transferred. I am not prepared to state whether they are all in operation or not. I do not know whether any of such pier stations have been "dried up" by the Port Authority Building or not, since that is not a part of my duties.

The operating personnel of the Commerce Building is approximately 92 men. That consists of a superintendent of the building and a staff of employees under him. The superintendent does not have charge of the entire building and its operation, since the Inland Terminal facilities are operated by the trunk line carriers. He does

have superintendence over the Inland Terminal space from the standpoint of maintenance of the property and supplying facilities to it. There are freight elevators in the building running from the upper floors down onto the floors occupied by the Inland Terminal but we do not classify the elevators as a part of the terminal facilities. Employees of the Port Authority do operate those elevators, and those building elevators are used to transfer freight from the upper floors of the building down into the terminal facilities. That is part of their function. These elevators have other functions in taking freight that does not arrive by railroad up and down the floors to the tenants in the building.

The revenue receipts from the Commerce Building are not classified into terminal operations and building operations. The revenue sheet for the building shows returns from the various services rendered including rent, steam, and electricity, and miscellaneous services such as repairs.

The several railroads using the Inland Terminal employ a joint operating agent who is in charge of the freight station. I do not know what his duties are. He has no charge whatever over the Port Authority employees.

I am familiar with the handling of the freight incoming and outgoing in the Inland Terminal in a general manner. The handling of freight in and out of the Inland Terminal is not by the Port Authority employees. The only freight that is handled by Port Authority employees, that is, passing through the station, is that of the people who occupy the upper floors of the building. All other freight into that station either for delivery or dispatch is handled by railroad employees. A substantial part of the freight which is delivered to the station from the floors above is handled by Port Authority employees. None of the Port Authority employees work in what is known as the Inland Terminal space. The elevators in that space are not handled by Port Authority employees. The freight elevators in the building which are operated by Port Authority employees do not go into the Terminal space; they go down into a small area adjacent thereto and open out on to a platform on the same level so that anyone going up and down thereon is independent of the station. There is no overlapping whatever in the elevator service which is attributable to the Terminal part of the building and that which is attributable to the Port Authority part of the building. It is true that these elevators that operate from the upper floors do open out on the Inland Terminal floors. They open on to a platform that is on the same level as the Terminal stations, and the freight goes through a door into the Terminal station. The freight on these elevators that comes down from the upper floors is ordinarily handled by the Port Authority employees. Other freight is handled by the employees of the several railroads.

The Terminal facilities of the Commerce Building are leased to eight railroads exclusively. It is not used by any other railroads that I know of, nor is it used by any ferry company or bus lines. It is

used by the American Railway Express Company. So far as I know the railroads have the sole voice in the operation and management of the Inland Terminal facilities. The only facilities for the handling of freight other than the space in this building which are owned by the Port Authority consists of some small internal trailers, and two small electric tractors, which facilities the Port Authority makes available to its tenants for their use in getting freight up and down from this platform on the first floor.

I do not mean to create the impression that the Commerce Building has no space devoted to warehousing purposes. However, I do make a distinction in my own mind between a warehouse and a building for stock distribution. A warehouse is a space which differs in its construction from the Commerce Building. It may vary from a mill-constructed building to a concrete bare building where large quantities of merchandise are put into rest until they are taken
 358 out in large quantities, but somewhat smaller than the original deposits. They generally deal with raw commodities or semi-finished commodities. While, on the other hand, the stock distribution center handles finished commodities which turn over rapidly and which are turned over directly to customers, or into that channel. There is a distinction in the character of business which is done. There is a distinction in the method of doing business, a distinction in the character of service that is to be supplied. For instance, the Woolworth Company is not conducting a warehouse company as it is technically known in transportation and terminal work. The Commerce Building does offer space in which warehousing can be conducted.

There is no physical connection such as railroad tracks between the Inland Terminal and any railroad, nor with any dock, pier, wharf, or other marine facilities. All of the freight incoming and outgoing, is handled by trucks. The Inland Terminal is four or five blocks from the nearest pier or waterfront. The Inland Terminal is not a part of any electric underground system.

The several railroads which leased space in the building have separate freight stations of their own outside of the building. I do not know what percentage of their freight goes through the Inland Terminal nor the ratio between freight handled by the Inland Terminal less-than-carload freight originating in the Port of New York. By no stretch of the imagination would all of the less-than-carload freight come in through the Inland Terminal. In establishing
 359 a ratio you must consider only the territory from and to which the Terminal would naturally feed.

I have had nothing to do with the advertising of the Commerce Building. The facilities of Commerce Hall are for trade and industrial expositions. It is a fact that Commerce Hall was used for the Ford exposition. Expositions similar to the Ford exposition have not been held at Grand Central Palace in New York. Grand Central Palace did not house the Ford exposition because it was not big enough and did not have the facilities.

At this point counsel for petitioners conceded that the series of advertisements introduced in evidence as Exhibit N were paid advertisements. It was further conceded by counsel for petitioners that the Port Authority has expended considerable sums of money in advertising the Commerce Building in various trade journals and in publications of like character. It was further conceded by counsel for petitioners that Commerce Hall has been advertised separately from the other facilities in the Commerce Building, and that the facilities of the Inland Terminal have been used in such advertising as inducements to have tenants move into the Commerce Building.

At this point counsel for the respondent introduced in evidence without objection, as Respondent's Exhibit D, a clipping from the New York Times newspaper, and counsel for the petitioners conceded that this clipping is an example of the type of advertising of the building used by the Port Authority, and that it was a paid advertisement.

360 The automobile show has never been held in Commerce Hall. After the Ford show the automobile people have from year to year made inquiries and have come and looked at the premises. But at all times they have renewed their leases at Grand Central Palace. I do not know whether they were solicited by Brown, Wheelock, Harris & Company, for that purpose but I have reason to believe that they were not.

Brown, Wheelock, Harris & Company were not interested in Commerce Hall. They handled the warehousing space. There was no allocation of space ever made to Brown, Wheelock, Harris & Company that I know of. They were not by contract made agents for any designated space in the building; they were not the agents for the building at all. What that company would do would be the same as any other real estate broker, namely, if they had some industry that was interested in space they would probably bring the Port Authority Building to their attention. That is the full extent of the contract with Brown, Wheelock, Harris & Company. They were paid a commission on the amount of space they rented. They did not have an exclusive agency on the building. Any broker who would come to the Port Authority could have secured any space that may have been available, assuming that the tenant was a satisfactory one. Brown, Wheelock, Harris & Company were in no different position from any other real estate or building broker in the city, except that they got a little additional commission for acting as the broker who might cooperate with

361 other brokers or the broker who would pass through them. Brown, Wheelock, Harris & Company did have authority to advertise the space in the Commerce Building subject to approval of the Port Authority.

Warehouse space in the Commerce Building is rented at various rates, running from 60 cents to \$1.25 a foot. That rate is no lower

than the commercial rate in New York City. The Bush Terminal Company leases space at from 45 cents to 50 cents a foot and probably as low as 40 cents in some cases. In establishing the rate to be charged in the Commerce Building the Port Authority made studies including studies of charges for similar space in the Bush Terminal and other buildings. Its rates were not based entirely upon those studies. The rates were based on an entire study that was made of the cost of the building, the operation of the building, the value of the space, the peculiar condition of the building, where it may apply to certain factors of tenants; and from that a rate was brought out which was higher than any commercial rate for new leases. I know that the Bush Terminal Company has not lowered its rates to meet competition with this building. I do not know that it has lowered its rates although I suspect it has.

In some cases incoming freight into the building comes from New Jersey terminals. In other cases it comes from pier stations if it is in a small quantity. I do not know where the freight originates since it comes in from all over the country. The Terminal is qualified to handle a less-than-carload shipment from any line that
 362 has connections and rates and routing constructions into Inland Terminal No. 1. There are millions of tons of less-than-carload freight coming into Manhattan every year. The reports show that the Inland Terminal handled only 40,000 such tons in its first year. I know that some of the railroads which have pier stations on Manhattan have inaugurated what they call store-door delivery within the past two years.

Asked what effect such store-door delivery would have upon the Inland Terminal, my answer is as follows: That store-door delivery would have no effect upon the Inland Terminal in my opinion.

(The foregoing question and answer were objected to by counsel for petitioners as wholly immaterial and irrelevant. The objection was overruled.)

There was no cross examination of the witness, and the witness was excused.

At this point counsel for the Commissioner stated that he proposed to introduce evidence as to the volume of traffic of the various ferry companies operating over the Hudson River and of the Bear Mountain Bridge Company, covering a period of years from 1923 to 1935, and showing the gross and net revenues from those facilities by months; that the introduction of such testimony would require a van load of records and documents if the primary records were required to be produced, and that he proposed to introduce written summaries of those primary records instead. Counsel for
 363 the petitioners stated that no objection would be made to the introduction of such summaries instead of the primary records. Counsel for petitioners further stated that in order to save time the petitioners would stipulate certain ultimate facts which the respondent hoped to prove by the foregoing offer of evi-

dence. The following stipulations and concessions of counsel were thereupon made as follows:

Mr. COHEN. He need not worry on that score. The only time primary evidence will come in is in case we cross-examine the witness and find that there may be some error in the statement, or some wrong inference or summary of competition.

May I state this at the outset; perhaps it may have a lot of time. We will concede that the business of the ferry companies operating between the west and east sides of the Hudson River have diminished, and that, as a result of the furnishing of facilities like the Holland Tunnel and the George Washington Bridge, they will probably continue to diminish. If we build the Midtown Hudson Tunnel, the business and revenues of the ferries will continue to diminish. Your Honor will find; in the records already in evidence, that part of the revenue upon which bonds were sold to the public, was an increased revenue that was expected to come from people who formerly used the ferries.

The MEMBER. Well, as I understand it, your theory is predicated upon the idea that one of the hopes in the establishment of the Port of New York Authority was the diminution of ferry traffic?

Mr. COHEN. Certainly.

The MEMBER. Well, that is incidental to its advantages.

364 Mr. COHEN. Certainly. Your Honor will find that that is true.

The MEMBER. Now, is that all you want?

Mr. BRABSON. If your Honor please—if counsel for the taxpayers will stipulate that, by reason of the construction and operation of the several facilities now operated by the Port of New York Authority, there has been created a competition with ferry companies across the Hudson River, and that, as a result of that, their gross volume of traffic and their revenues have been decreased accordingly, that is all we ask.

Mr. COHEN. Why, we will freely concede that the furnishing of vehicular tunnels under the Hudson River, and bridges over the Hudson River, may ultimately result in the complete wiping out of the ferries, and that the competition of that kind of service is such that it is like the wiping out of the trolley cars on the streets by the buses. Now, if we want that—or, if you want that admission, you can have it just as broad as you want it; but I do not want to make any argument now.

I think that your Honor knows what the argument is on our side.

Mr. COHEN. May I suggest something further that may be helpful. Mr. LaRoe wishes—or, rather, Mr. LaRoe suggests to me that, if I am prepared to admit upon the record that these ferries in private ownership are subject to taxation, that this will save six hours of

the case. If he is correct in his advice, I will stipulate right here and now that all these ferries are operated as private companies, and that they are subject to taxation.

365 The MEMBER. Subject to what kind of taxation?

Mr. COHEN. New York City taxation, income taxation on their earnings, just as any private corporation is.

Mr. BRABSON. And that their revenues have been diminished accordingly?

Mr. COHEN. Well, obviously, if they pay taxes, their net revenues—if that is what you mean—the amount available to stockholders, of course, is reduced. So I don't see any sense in putting that on. I don't see any sense in fighting over that, or in taking up the time of your Honor with it. Your Honor would, as a matter of fact, take judicial notice of that fact. How could we dispute it? Why spend six hours proving the obvious?

The MEMBER. I don't know if I would.

At this point the hearing adjourned to February 5, 1936.

Stipulation re "Comprehensive Plan"

Mr. LAROE. If your Honor please, last night we met with our friends on the other side and by means of a very brief stipulation we have saved, according to them, some six hours of record. That brief stipulation reads like this:

"It is stipulated and agreed by Petitioner and Respondent that prior to the formulation and adoption of the so-called Comprehensive Plan, there were ferry companies operating between New Jersey and New York, and that the facilities constructed by the Port of New York Authority, pursuant to the statutory plan are in competition with those ferries, have reduced their traffic and their earnings.

366 "It is further stipulated and agreed that the ferry companies so affected were either independent and privately owned ferry companies, or operated by or in connection with railroad companies serving the Port of New York District, and that in either event, the ferry companies were subject to taxation, both Federal and State, as private corporations."

I am told that that will save six hours of testimony.

The MEMBER. Do you stipulate that, Mr. Brabson?

Mr. BRABSON. We do, your Honor, there is just one point in regard to it and that is a question of tense.

* * * * *

Mr. LAROE. The tense is important in the sense that these ferry companies were in existence long prior to the formulation of the Comprehensive Plan. In that sense the past tense is important, but we didn't intend, by this stipulation, to give the impression that, when the Comprehensive Plan came into being, the ferry companies passed out of existence, rather to give the impression that some of the

facilities created by the Port Authority pursuant to the company did compete with the ferries and continued to do so thereafter.

Mr. BRABSON. That is all I ask.

367 BILLINGS WILSON, having been called as a witness on behalf of the petitioners and being duly sworn, testified as follows:

Direct examination:

Mr. BRABSON. Before you begin this, may I state that I have again examined the stipulation of facts, the supplemental statement of facts, as to the petitioners Billings Wilson and John J. Mulcahy and in view of that re-examination, since it does follow the form of the stipulations of fact in the case of the other three taxpayers, we are willing to stipulate that the facts contained in that supplemental stipulation of facts may be received in evidence.

Mr. COHEN. That is very helpful and I shall accept it so far as Mr. Mulcahy is concerned, but since Mr. Wilson is here it will help the record and help your Honor's understanding to have his oral description of his own efforts in the light of the testimony elicited from the witness Gerhardt and since counsel suggested that they would want to ask questions we want to furnish them with ample opportunity to ask questions. Obviously, in describing his duties, incidentally, your Honor will get a picture of the activities of the Port Authority, which, of course, bears upon the contentions made by the Bureau.

Whereupon, pursuant to the right reserved by counsel for the petitioners when he had first rested for the petitioners, Billings Wilson was called as a witness and testified as follows:

I am the petitioner in docket number 77377. I am employed
368 as Assistant General Manager of the Port Authority and received a salary of \$14,625.00 for the year 1933. My employment has continued from July 1, 1922, to the present time. Upon entering the Port Authority's employ I took an oath of office.

I have been with the Port Authority since July 1922. Prior to that date, for at least a year and a half, I was an assistant to a consulting engineer, Mr. Francis Lee Stewart, of New York City, who was also consulting engineer for the Port Authority and for the old Bi-State Port and Harbor Development Commission in the formulation of the Comprehensive Plan; and as Mr. Stewart's assistant I sat in on a great many of the meetings of the old Port and Harbor Development Commission when the technical details of the plan were in process of formulation. I think I was in on most of the meetings between the railroad representatives and the Port Authority Commissioners and staff, at which the criticisms of the first outlines of the Comprehensive Plan were made. I am therefore familiar in a general way with both the Comprehensive Plan as proposed by the Bi-State Commission, the predecessor of the Port Authority, and the Comprehensive Plan as finally adopted by the two States in forming a part of the compact.

In 1922, when I first came with the Port Authority, we were at that time faced with the action of the two States and of the Federal government in having recently formally approved the final compact between the two States, and the staff was assigned the task of investigating the various phases of that plan to see what was the
 369 most practical initial step that we could carry out in accordance with the mandate of the two States. It fell to my lot as a general assistant to the Chief Engineer to make an intensive study of Belt Line No. 13, so-called, which is a marginal railroad extending around the New Jersey shore of the Hudson River from Fort Lee to Bayonne, a distance of approximately 15 or 16 miles, which belt line was owned in different sections by four different railroads and operated in a very disjointed fashion, with the result that freight from Weehawken or Hoboken, destined to Jersey City or Bayonne on a different line or railroad was often hauled out as far as Eastern Pennsylvania and back again, various circuitous routes at a very high rate. The staff under my direction made a very searching analysis of railroad records and the movement of cars, freight rates, etc. in preparation for trying to carry out this particular initial step in our extensive program.

Belt Line No. 13 was not the only thing we had in mind at that time. We had the whole Comprehensive Plan in mind, but after going over the record it seemed that it was the facility that lent itself to the earliest effectuation, because it involved the least amount of new capital investment. The rails were practically all there and it would mean that we might have to put in some interlocking plants at some of the junctions and to improve the signal system along the line and coordinate the human element that was operating the railroad. But it did not seem necessary for the Port Authority to put in a great deal of new capital, and at that time, you understand, we
 370 did not have any capital to invest, we had to develop our credit structure and we were practically starting from scratch with nothing but a room full of furniture and some blue prints as our assets and legacies from the two States. So we had to begin right at rock bottom to carry out the will of the two States as it had been given to us.

I am familiar with the language of the statute which authorizes and directs the Port Authority to effectuate the Comprehensive Plan as rapidly as economically practicable. As I understand it the words "economically practicable" imposed a duty upon the staff under my direction in taking up the steps under the Comprehensive Plan, to find those things which were at the moment economically practicable.

These investigations which the staff carried on were finally presented in 1923 to the Interstate Commerce Commission at a joint hearing with the Commissioners of Port Authority and representatives of the Shipping Board present. Before the case had proceeded to a conclusion the railroad defendants announced that they would like to have a rather lengthy adjournment because they thought that it might be possible for them to meet us more than half way on

the things that we were advocating, and as a result, the hearings were adjourned and our staff, including myself and the other members, went into a series of conferences with the railroads serving the New Jersey water front, and we were able to work out a program which the railroads themselves carried out at an expenditure of approximately half a million dollars for improving this belt line and setting up an operating committee composed of a manager from each railroad and a representative of the Port Authority. As a
 371 matter of fact I was designated by the Port Authority as their representative on that operating committee.

That did not involve the investment or expenditure of any capital on the part of the Port Authority. It did not seem necessary at that time. The railroads agreed to make all the necessary changes themselves and they did spend a considerable sum of money. The result was achieved by reason of factual data prepared under my direction and presented on behalf of the Port Authority first to the Interstate Commerce Commission and to the Shipping Board, and then to the carriers.

From our investigation, prior to this proceeding in which we went into the past efforts of the various trade bodies and individual shippers to secure relief from the carriers, we found that repeated efforts had been made to get relief along that section of the waterfront and that they had been unsuccessful. Therefore, there is no question in my mind as a person who worked up this case and it is absolutely my opinion that if the Port Authority had not pursued this investigation to a successful conclusion we would still have the same archaic method of railroad operation along that waterfront that existed fifteen years ago. This agreement with the railroads was concluded in 1923 and 1924.

Now, that matter did not take up all of our time. We were also going into other phases of the Comprehensive Plan, such as the question of relief for Manhattan Island. Manhattan has always been from a freight standpoint, a very congested and difficult place
 372 to serve because it is cut off by waterways except on the north, and the great bulk of the freight traffic for Manhattan and for the ships that dock along the island water front come from the Jersey railroads on the other side. Over a long period of years the railroads themselves had not been able to develop any method of bringing the freight across the Hudson except by old-fashioned ferry boats and car floats. The first car floats came into use in New York Harbor in 1866, after the Civil War, and aside from growing a little bit bigger and the construction being changed from wood to steel, there has been no change in the method of handling railroad freight across the Hudson in the remaining sixty years, ever since that time.

So the Port Authority took up studies of the old Bi-State Commission for serving Manhattan Island, which contemplated providing this city and the millions of inhabitants on this side of the Hud-

son with an all-rail weather-proof, all-year-round serviceable freight connection for their food stuffs, their fuel, building materials, etc. At that time the only practical way, certainly for the lower end of Manhattan and where the ground is flat on both sides of the river, seemed by tugs and that is the plan we started out on—the idea of a series of stations removed from the waterfront of Manhattan. The railroads were occupying about one-third of the total of Manhattan waterfront south of 59th Street, with local freight station facilities that could be better used by ocean shipping. We visualized this plan and we worked out the economic proof of it whereby the railroads, since they did not need deep waterfrontage to berth
 373 the shallow craft, car floats, lighters, and tugs, could transfer their operations to the interior of Manhattan and release that waterfront for deep craft trans-Atlantic superliner ships.

To reach the interior of Manhattan and the new stations, we visualized the set-up insofar as it was possible in zones of equal distance, and equal density along the island. We resorted to the idea of tunnels.

The first program we tested out was a so-called automatic electric railroad system which involved the handling of this freight from the Jersey rail shed through deep underground tunnels under the Hudson in electrical rail cars somewhat like the subway cars. The costs were very high, and since our plan and the mandate of the States also placed upon us the burden of working out some measures for prompter relief while these long-range plans and more extensive plans were being developed; and since after the World War the motor truck came into much greater prominence than it has prior to the war when it was more or less of a rarity, as the early photographs of our waterfront will show, we sensed that we could give immediate relief to this Manhattan situation by transferring this freight across the Hudson River on motor trucks, using the existing ferries in the beginning and using vehicular tunnels and bridges as they were built. In that way the entire burden of the cost of the bridges and tunnels would not be thrown on freight alone, but we could attract passenger car traffic to assist in the carrying of the burden of the freight service. Also the Holland tunnel was under
 374 construction in 1923 and 1924, and that would provide, when completed, an all-weather connection between New York and the Jersey side of the harbor through which the freight trucks could operate.

So it seemed to us we might go ahead with the inland station phase of our Comprehensive Plan, but defer the under water electric railway tunnels which we knew were enormously expensive, and move the freight across on rubber tire motor trucks, using the city streets and the public highways and these tunnel and bridge facilities in common with other passenger car traffic.

Therefore, one of the next steps that we attempted was to interest the railroads in proceeding with this inland station idea.

The most of this development work was under my immediate supervision, or I was connected with it when I was under the Chief Engineer. I am therefore describing my own functions.

We opened a series of negotiations with the railroads, and we found them lukewarm to the idea of giving up their present facilities, that is, their piers along the Manhattan waterfront. And while the negotiations were proceeding the railroads themselves attempted to solve the problem in another way, by introducing some trucking operations of their own. But they operated under a competitive arrangement where each railroad set up its own inland stations and immediately engaged in a series of competitive maneuvers with each other whereby they paid rent to these stations and paid a different trucking company to truck the freight. Then the question of

375 allowances and rebates came in until the situation became so disturbed on Manhattan Island that the Interstate Commerce Commission had a proceeding before it to investigate this whole question of trucking railroad freight on Manhattan Island. The Port Authority participated in that. This was about 1924. And after it had progressed about a year, this investigation of trucking on Manhattan disclosed all of these objectionable practices. The Port Authority participated in this investigation and I and other members of our staff were on the stand submitting evidence.

The railroads saw the way things were going for them at that time, and it was not a very healthy growth or development of transportation facilities, and so again they indicated a willingness to negotiate with us on another phase of our plan. They appointed committees of engineers, traffic men, operating men, and conferred with our staff, and out of that grew this first union inland freight station which was built pursuant to a contract with the railroads.

From there on the development of the plans for that station and the details of negotiations with the railroads and the assembly of figures, etc., was handled by other members of the Port Authority staff, engineers, accountants, etc.

One of our problems was to find for this first station a site that would be within our means to finance. We could not take the block that the Woolworth Building stood on or that the Custom House was on or that the City Hall was on; we hoped to find a block where we could acquire certain properties and could condemn them

376 if necessary, and where the cost would be within the limitations of our economic practicability mandate. We made several tentative selections and discussed them with the railroads. We had to have a block that was big enough to perform all the operations, and we were trying to locate this first station in a territory that was not served so intensively by other existing railroad facilities. We selected what we called a no-man's land of transportation which extended roughly from Christopher and Hudson Streets on the south up to 24th Street on the north and the entire west side of Manhattan. Within those north and south limits there was not a rail-

road freight station in that zone and it seemed an ideal place to put this first union facility because there was not any competitive influence.

The selection of blocks in that zone involved a great deal of discussion. We had several blocks in mind and it involved discussion with the municipal authorities. They had certain ideas as to how they wished to extend the regular residential section of the city and the apartment house area. They had in mind that we were going to put those in certain directions and so we tried to meet their wishes. And then the railroads had certain ideas and we tried to meet theirs, and as I say we had to avoid blocks that had parcels of property on them that we could not condemn.

We needed a large area for this station to start with. Our studies with the railroads showed that there were about 2,000,000 tons of less-than-carload or packaged freight on Manhattan Island, south of 59th Street, for all the railroads that had to be considered in planning this new method of handling freight.

It seemed in our conferences with them and it developed that three of these union stations could probably take care of that amount of freight if properly located. So as to reduce truck hauls for merchants and to space the facilities properly on the island, one of these stations would be on the upper west side, that is, roughly between Christopher Street and 59th Street; one was to be on the lower west side south of Christopher Street and down toward Canal Street; and the third station was to be on the lower east side. Now we selected with the railroads as the first step, this zone that I had referred to previously for the first of those three stations. This meant planning a facility that would take care of the freight handled contributory to that zone, which was estimated to be about 650,000 tons of freight per year.

We had very exhaustive and careful plottings made which the railroads cooperated in by letting us have access to their records and to their station facilities. We interviewed truck men to find out where the lots were coming from; we made up charts to show the gross hauling going on from the different factory buildings and lofts or stores on Manhattan to those 45 different railroad pier stations around the rim of the island, and from that we started in to lay out a facility that would take care of 650,000 tons of freight a year at the street level. We found, reducing that to tons of freight per day as based on the average load per truck which was going to and from pier stations, which run around one or two tons

per truck, that we would need a certain number. I don't carry the figures in my head but we would have to accommodate a certain number of trucks per day at this freight station. Now, based also on plottings made as to how long those trucks had to remain at the pier stations to unload freight and to pick up loads of inbound freight, we should figure the time that each truck would have to remain at the tail board of the inland station platform. That

gave us the number of trucks per day and the normal working hours that it could occupy each of those tail board positions, and divide that into the number of trucks per day that we had to handle to take care of this, some 2,500 tons of freight per day, that gave us the number of truck positions we had to have there. Each truck position was roughly 10 feet wide by 30 feet to 40 feet long, and that gave us immediately, ranging those side by side, a measure of the space requirements we would have to have. We found at once that we would have to have a block that was at least twice as large as any block in that section of the city.

So we conceived the idea of using two floors and getting our capacity within one block area by putting half of the business on the lower floor with ramps down from the street, so it would be just as good as a street floor. That is the way the building was finally designed, with such improvements and changes and modifications as the railroad engineers and operative men dictated.

That narrowed our selection to blocks that were possibly 800 feet long and 200 feet wide, and then by a process of elimination
379 of blocks of that size, we came down to a choice of two or three locations, and ultimately to the choice of one which is the location of our present facility.

On the 16th Street side of the building at the present time there are trailers that line up against the platforms, and those trailers are assigned places, one for each of the trunk line carriers, that is, for outgoing and incoming freight that goes to and comes from the railroad depots.

At the present time the station is operating at only a small fraction of its capacity. It was built ultimately to take care of about 650,000 tons of freight. The traffic has grown steadily in the last three years since it was opened. It is now running between 60,000 and 70,000 tons a year. The operation of the terminal was started in October, 1933. For the first year of operation from October 1933 to October 1934 the terminal handled 40,000 tons. From October 1934 to October 1935 it was 60,000 or 70,000 tons.

The present operation of the railroad premises of this station work out about this way; the merchants' trucks with freight for all railroads enter 15th Street from the 8th Avenue end, that being a west bound street, and back in on the 15th Street side of this building at the street level to a freight platform, about the height of the truck side. The whole building on that side is devoted to these back-up stations that are recessed inside the building line to get the freight on the trucks. The merchant's truck arriving there anywhere along that block can pick any vacant berth and back his

380 truck in, and the nearest railroad freight checker will check his entire load, regardless of what railroad it goes to. Then when the merchant is through, he gets his receipt for the freight. On the freight platform the railroad companies, through their joint agent and a joint labor force, sort that freight out for the different railroads and place it on small platform trailers, which

are pushed or pulled across the platform to the 16th Street side of the building, where there are a series of large body trailers backed up, one, two or three for each railroad. Then this sorted freight is put into one of these trailers, all the Pennsylvania freight in one, for example, all the Erie freight in another, all the Baltimore and Ohio freight in another, etc., and those trailers are filled by the station forces. Tractors haul these trailers away to different rail heads. Whether it is put into those railroad cars, or whether it is a reverse operation, it is the same. In the morning it is the incoming freight; the merchant picks up the freight on the same side of the building where they deliver outbound freight.

Now the basement of the building is used in a similar manner as a union dump or consolidating point by the Railway Express Agency, which is a subsidiary for all the railroads for the handling of a large volume of railway express freight. That is a temporary arrangement between the railroad companies and the express companies, because the railroads don't need the lower floor at this time, since the station is only operating at about 10 per cent of its railroad freight capacity.

Returning again to the phrase "economically practicable," we found that it was not economically practicable to take a whole
381 block on Manhattan Island and just use a structure for the Inland Terminal. (The foregoing and the related testimony immediately following were admitted over the objection of the attorney for the respondent.)

Our studies of the cost of real estate on Manhattan Island plainly showed that if we only developed the ground area for this railroad terminal with either a floor above it or below to give us the second step that the railroads would require, we could not get enough rent from the railroads to pay the cost of the ground and the cost of the simple railroad facilities that would be required without forcing the railroads to pay more in the way of rent and operating expenses than they were paying at that time on their own facilities. Since the whole basis of the Comprehensive Plan was to reduce the cost of freight handling in the Metropolitan District, it showed us that it was not economically practicable to go into the development of such an area with a purely railroad facility, because we could not produce enough from the railroads—we would have to charge them too high rent, and that was all there was to it. So that was done by developing the air rights, not by just putting up a single story facility on which you could not earn enough to carry roughly a three or three and a half million dollar investment. So we had to build upper floors in order to make the ground floor facility available to the railroads at a lower cost than they were paying at that time for their existing facilities.

382 The staff, under my direction, planned the projects which were recommended to be carried out under the Comprehensive Plan from time to time by the Commissioners in the manner

which the staff found to be sufficient to insure enough income to meet the expenses of operation and maintenance as well as the interest and sinking fund requirements of the bonds which the Port Authority was authorized to issue. My staff consistently followed the rule that each project in the Comprehensive Plan as it was adopted and carried out by the Port Authority through its own efforts, had to be self sustaining in order to enable the Port Authority to raise the moneys necessary to finance it.

I can think of no circumstances in the light of my experience on the staff of the Port Authority and with all the data that I had at my command, under which an Inland Terminal of this size or anything like this size could have been established in the Borough of Manhattan for railroad use, on a self supporting basis without the addition of upper stories to be utilized for revenue producing purposes.

Mr. COHEN. I direct your attention to one of the exhibits that is in this case, the joint report, page 17 of Exhibit B. * * * I am just going to use one quotation about the portion devoted to terminal purposes. "It is proposed to build two additional stories for warehouse purposes and it is estimated that the revenues that can be obtained from these additional floors will contribute materially to a reduction of the fixed charges against the system. Besides the two warehouse floors incorporated in the design, estimates have been made of the extra cost of the revenues obtainable from two additional floors, for terminal, loft, manufacturing or office purposes."

I ask you now whether that conclusion arrived at by your predecessors in the joint report made to the Legislatures, was also arrived at by you and your staff in studying the plans for the first series of inland terminals for Manhattan.

The WITNESS. Not as to the detailed number of floors, but the general conclusion obtained that we would have to have additional floors in order to carry the investment in freight station facilities at no more, in fact, at less cost to the railroads than they were paying at their pier stations. We had to have the additional floors in order to carry and make this an economically practicable project. Estimates were made of the cost of the land for this entire block and those estimates were considered before the plan was submitted to the Commissioners. Estimates were made also of the cost of the building, inclusive of the terminal, of various stories, twelve, thirteen, fourteen, or fifteen. We made a number of such designs.

Mr. COHEN. How did it come about that fifteen stories were selected?

The WITNESS. We started with this building by progressing the floors upwards on the basis of the areas that each floor gave us. We determined how much rent we could expect to get on the existing level of rentals and then we progressed the floors upward until we reached a point that would give us just enough total rent to carry the real estate investment plus the building cost.

The Port Authority had no taxing power, and had no subsidy from the States to build this Inland Terminal. It actually had to raise approximately \$16,000,000.00 on its own bonds to build that terminal. In order to sell those bonds to the public it had to show that the total revenues from the entire building would be adequate to pay operating expenses, a debt service, and all other incidentals to support the borrowing. The objective of my staff was to figure out the economic practicability of this scheme. There was no way by which this terminal could be achieved except by insuring sufficient revenue to support the total cost of the building. My efforts as Assistant General Manager in charge of port development were in cooperation with the carriers to work out a financial scheme that would make the Inland Terminal economically practicable. The commercialized sections of the building which I refer to as, the air rights occupied a volume of 30,000,000 cubic feet, approximately 8 per cent of which is store and office space, and 92 per cent is modern loft space construction.

(Mr. Cohen then handed to the Member the annual report of the Port Authority dated December 31, 1930, already in evidence as a part of Exhibit G.)

Mr. COHEN. Instead of asking the witness questions, I will call your Honor's attention to some material that is already in evidence, so as to connect up with his testimony and save some time. Opposite page 43 of the annual report for 1930, your Honor will find a picture or sketch headed "Perspective of Inland Terminal No. 1." You will

bear in mind that this is the Tenth Annual Report to the two Legislatures by the Port Authority before the building was erected. I now ask your Honor to turn to page 43; "The proposed Inland Terminal fronts on two 100 foot avenues and is flanked by two 'one way' 60-foot streets. * * * It is but one and one-half blocks distant from a group of piers serving trans-Atlantic lines. It is centrally located (north and south) in the largest package freight center in the world. It will serve and be served by all railroads entering New York by means of shuttle, automotive equipment between various railroads and the terminal. Incoming freight from all railroads will be classified and grouped for individual consignees. (One pick-up.) Outgoing freight from all merchants will be classified and grouped for shipment by individual railroads. (One dump.) All rail activities such as unloading, loading, sorting, and classifying will be accomplished with no interruption to or from normal street, pedestrian, or vehicular traffic." That is because the tracks go into the building, and they do not stop on the street.

The WITNESS. That is correct.

Mr. COHEN. As is true of the ordinary loft and factory building in New York?

The WITNESS. That is one of the great attributing factors to the expense of trucking in New York. Elsewhere than in this building it is the trucks parking at the curbs that cause congestion in the street and delay; it delays the delivery of freight to the buildings

and adds to the cost of the merchants doing business. Therefore this design of ours was intended to get around that and reduce costs in that manner very substantially.

386 Mr. COHEN. Would you mind, parenthetically, telling his Honor how it has worked out in the actual reduction of street traffic, and further to shippers?

The WITNESS. Well, from information that has come in to us in the form of letters and reports from people, from merchants who are using this building, some of which I have seen, a great many of these merchants have told us that they have made very substantial savings in the cost of trucking trade on Manhattan by reason of being able to use this single dump facility, this union station savings running as high as a dollar or a dollar and a half a ton, on every ton that they handled through it. * * * It worked out in this way: Before this station was built, in the old days, a merchant, let us say in the garment section, or the district around the 30's west of Fifth Avenue, who had outgoing shipments in the afternoon to six or seven different railroads, would load those shipments on one, two, or three trucks in order to get to the different pier stations of the individual railroads before their doors close, around 4:30 or 5 o'clock. If he had freight for five or six railroads, let us say, and if he started out in the afternoon, after his shipping and packing department got everything wrapped up and properly boxed, by the time he fought his way through the congested streets and city line at the waterfront stations of individual railroads, and tendered his one or two boxes for that first railroad, and then moved down the waterfront half a mile or three-quarters of a mile and did the same thing at another station, he might only get a half or one-third of his

387 load discharged before all the stations close at 4:30. But under this system he can take that entire truckload to his union station, back in at one point and with one receiving clerk unload the whole truck in twenty minutes and be back at his place of business in an hour; and he can do it all in one trip, in one stop, instead of having to go to five or six different places with the truck haul in between each, and with the same amount of delay, finding a place to park the truck, finding a receiving clerk to check his freight and give him a receipt for it. That is where he loses his time under the old system; that is where he saves his time under the new system.

The MEMBER. Now let me ask you about the feature of getting the trucks and vehicles off the street. Have you thus far found that at all times you have had loading and unloading facilities adequate to accommodate the trucks that wanted to use them?

The WITNESS. There is no time during the day when there are not adequate and ample facilities. Thus far we have at all times had ample loading and unloading facilities and space adequate to accommodate the trucks that wanted to use them, in fact, surplus space. We have also provided for the peak hours of the day, even when the Terminal is called upon to handle 950,000 tons a year.

At the present time, as a matter of fact, they are not using the two floors that were designed for the traffic, except as the American Railway Express Company is using a part of the railroad service on the basement floor. We leased both floors to the railroads, but they are only using a part of one, so that the station is not even physically used to its full capacity at the present time. The two years that have transpired since the station was erected were part of the depression years when business fell down.

Mr. COHEN. Now I read further, if I may, from page 44 of the 1930 report (Exhibit G): "All rail activities, such as loading, unloading, sorting, and classifying, will be accomplished with no interruption to or from normal street, pedestrian, or vehicular traffic.

"The basement and ground floors will be reserved for freight purposes. The structure composing the fourteen additional floors will agree with the requirements of the building code of the City of New York. The air rights commercialized occupy a volume of thirty million cubic feet, approximately 8 per cent of which will be store and office space, and 92 per cent the most modern loft space construction.

"The building will enclose 2,373,140 square feet (gross) of floor space; 152,940 square feet (gross) of which will be for office building purposes and will provide for 112,260 square feet (net) of stores and offices; 282,650 square feet (gross) assigned to Freight Terminal purposes, 1,842,000 square feet (gross) to lofts and light manufacturing purposes, and 95,550 square feet (gross) will be occupied by power, lighting, and heating equipment and service facilities.

"Those parts of the structure dedicated to freight usage consist of ramps connecting Fifteenth and Sixteenth Streets with the basement, which, except for elevator pits, elevator inspection and repair space, and necessary fire exits, is to be occupied by driveways, freight platforms, valuable-package room, locker rooms, toilets, mobile equipment, repair shop, and employees' lunch-room.

"The freight terminal structure will be of structural steel framework, thoroughly fireproofed and equipped with a 'dry pipe' sprinkler system, adequate ventilating equipment will be provided to insure comfort for employees in the basement.

"The street floor on Eighth Avenue has been so arranged that the entire frontage, except for the main entrances to the office building, can be occupied by a bank, stores, shops, or for allied purposes."

The witness resumed his testimony as follows:

The above figures read from the Port Authority Annual Report for 1930, were not compiled under my supervision, but were prepared by Mr. Evans under the supervision of the Chief Engineer. This was not contemplated to be the last or only Inland Terminal to serve Manhattan. Negotiations with the railroads contemplated three of these, two more to be built when the railroads wanted them built. The Board will find in the original joint report, the so-called Red Book, maps showing zone districts and numerous terminals.

These were prepared by my department. As originally contemplated in the studies of the Bi-State Commission and indicated in the joint report, I think we had in mind twelve of these Inland Terminals, each in a zone of approximately equal freight density. Extending from 59th Street we had sliced Manhattan into equal zones and 390 had planned a station in each, not equal geographic zones but equal freight density zones.

The idea of providing Inland Terminal throughout the Port District has not been abandoned by me or my staff or the Commission. We have had in mind the development of such facilities in these outlying points whenever the transportation needs indicated it was necessary or desirable, and when it could be economically practicable or economically practicably financed and carried out. As a matter of fact we have in the last two years conducted a rather exhaustive transportation survey in Northern New Jersey, in the Newark territory, in which we have gone through the same preliminary clocking of truck movements and freight car movements and quantities of freight in the local freight stations that we did for this Manhattan study; the data on that Newark freight transportation study is in process of analysis now in our Bureau of Commerce which is under my general supervision. We have in mind there that it may be quite possible in the near future to consider the erection of such a union facility in that territory, likewise in other sections of the Metropolitan area. Of course, Manhattan Island is different from other sections, it is not served by rail, and in many of these other sections there are to some extent union facilities to-day, whereas there are none in Manhattan.

There are no pier stations on the New Jersey side, but there are many New Jersey shippers who to-day truck to Manhattan by the tunnel and by ferries to reach the union inland freight station 391 and pier stations, and there are others who truck from Brooklyn and Queens, because the improved service that is available today out of this union facility makes it better for them.

It was never expected that Inland Terminal No. 1 would take care of all the less-than-carload freight on Manhattan Island; it was contemplated it would take care of a third of the less-than-carload freight south of 59th Street on Manhattan. Since it was planned, the business depression has caused L. C. L. freight on Manhattan Island to decline very substantially so that this station today probably has a capacity for almost half of the total L. C. L. on Manhattan. My impression is that if you leave out perishables and bulk material such as coal, oil, and such things which were never contemplated to be handled in this terminal, that L. C. L. freight on Manhattan probably does not run over 900,000 or 1,000,000 tons a year.

It was not contemplated when my staff and I planned this Inland Terminal, that the pier stations would be at once removed from the waterfront piers by reason of this one terminal. The reason was that this whole transportation problem in the Port of New York so far

as the railroads are concerned, all fits in together; you cannot take any one fragment and cut it off from the rest of the railroad trunk and say, "Well, we are going to solve that portion of the railroad problem by itself." In tackling this question of service to Manhattan, we had in mind, and still have in mind, drying up the use of these railroad pier stations as time goes on.

392 Now there are three general types of freight handled on railroad pier stations, one of which is the L. C. L., or package freight, which we propose to move inland to these inland terminals; another is the so-called carload type of freight which lends to store-door delivery by motor truck from the Jersey side. That system means in general that the railroad cars instead of being put on a car float and towed across the river to those pier stations, would be placed on team tracks, that is, tracks with roadways alongside of them on the Jersey side and the freight unloaded into motor trucks over there, and the trucks would come across the river instead of the freight cars, and go direct to the merchant's store door or place of business, wherever the freight should go. That saves the rehandling at the pier stations which is much more cumbersome and expensive handling, because it is not possible at a railroad pier station to back a truck up to a car door. The car lies offside on a pier station, on a car float which bobs up and down with the tide, and sometimes, with sleet and ice and driftwood, you cannot get that car float in close to the door, and you cannot get the truck body up against the car on that boat, so the freight has to be hauled off by hand truck and taken down gangways or up gangways on to the pier. There it is put on the floor, and when later on the merchant comes down, he has to lift this freight off the floor of the pier and put it on his truck body, raising it from $3\frac{1}{2}$ to 4 feet, and that requires a great deal of extra labor. In connection with that one item of move-

393 ment alone, lifting the freight from the floor of these piers up to the level of the truck, there has developed in this port over a period of years a rather difficult labor situation, having to do with what we call loading on piers. The group of men that hang around the entrance to each of these piers sort of have a little monopoly on that activity and when a truck comes down for freight, even though there may be a driver and a helper on the truck, these men at the entrance to the pier insist that they be hired to lift this freight up to the truck, and that adds to the expense of that operation. That would all be eliminated under a store-door delivery of car door freight, because the truck would back up to the car door and the driver and the loader would unload as everywhere else in the United States, and that would take care of the second item.

The third item is the perishable food and dairy products, and things of that kind that move in the summertime under refrigeration, and which over a long period of years have become concentrated in our market district on the lower west side of Manhattan; the freight is more or less frozen there. It is frozen, that is, it is anchored to that area, because the jobbers who have their little market

stores and wholesale produce houses all around that area, clustered around these particular railroad piers, are all interconnected by a system of refrigerated brine pipes that run under the city streets just like gas and water mains, from central refrigerating plants that pump this brine to the different dealers, and each has his own little refrigerated area or refrigerator, so to speak, in his place of business. So this traffic will have to stay there because the trade is more or less anchored there and we don't contemplate handling that traffic through inland stations or by store-door delivery. But we do contemplate consolidating it from all railroads on to a limited group of three or four of the nearest piers to that area of the city. No matter who owns those piers today, we would say those piers should be a union produce terminal to which any road that has carloads of perishables can float those cars and have them handled by a union terminal force. But all the rest, the store-door delivery and the L. C. L. freight, can gradually be removed from these piers and the piers restored to the city for leasing to steamship companies as their various leases expire. That is our general program on Manhattan. It is most decidedly contemplated that ultimately in the effectuation of the Comprehensive Plan, there will be a substantial reduction in the use of the waterfront on the Hudson River for railroad purposes.

In response to your question whether the work of my department is confined entirely to the physical railroads and their operations; my answer is that we are charged with other duties which have to do with the matter of the steamship operation in and out of the Port, and other methods of transportation and terminal facilities. We feel that we have a general responsibility for improving transportation conditions generally through the Port, not only railroads, highways, and steamships, but even studying air transport.

395 With reference to steamship facilities, my staff has considered the matter of the long piers to accommodate the big ocean liners like the Normandie and the Queen Mary; we have cooperated with the City of New York and the Dock Commissioner in that field. So far as my activities with the Dock Commissioner are concerned, I think that we think alike on these matters. We discuss them together at numerous conferences and we cooperate with them when he has matters to be developed to passing before the Army Engineers regarding the movement of harbor liners, so that he can build his new piers or berthing facilities.

We have studied the need for channel deepening and channel widening in various sections of the Port, pursuant to a specific mandate to us in the Comprehensive Plan that we should urge upon the appropriate Federal authorities the improvement of channels, and we have, on our own initiative and on representations made to us by the steamship and tow boat interests and others, urged that improvements are needed in certain of the channels. We investigated the conditions, and we have made certain field surveys, we investigated potential traffic—how much is going on the waterway, the depth of the

water—and have appeared at numerous hearings. I imagine we were before the Army Engineers, oh, once every two weeks throughout the year, twenty-five times a year, on one channel matter or another, urging the widening or deepening or something that would improve water transportation in the Port.

With regard to the statutory language requiring coordination of all the terminal and transportation facilities in the Port district a picture of the processes that are being followed by the Port Authority through me and my staff to achieve ultimate coordination is a rather lengthy story.

The original Comprehensive Plan was factually a railroad plan, and so a great deal of our activity has been toward coordinating and improving the railroad terminal facilities, but we have also gone after the highway problem and the waterway problem. With regard to the railways, I have described rather fully the Manhattan situation. The principal additional features we have studied and tried to work out with the railroads were for a consolidation of all their marine activities in the harbor. At the present time each railroad operates its own independent fleet or navy of tugs, carfloats, lighters, barges, floating derricks, ferry boats, in some cases, and these are used in delivering freight of that one railroad fanwise from its terminal on the Jersey side to several Hudson pier locations and industrial locations about the harbor within the so-called lighterage limits. These lighterage limits are rather far flung; they extend up the Hudson River to about 135th Street; they extend up the Harlem River to about 145th Street; they extend down the East River to Hell Gate, all the way down the Brooklyn shore to Bay Ridge, which is just below the Bush Terminal Company; then across the Staten Island shore down to below Stapleton to the Government Quarantine Station, around through Kill van Kull to the entrance to Newark Bay, approximately then up the Jersey shore again to the Hudson River opposite 135th Street.

The southerly lighterage limits are at Bergen Point at Bayonne, which is the entrance to Newark Bay. Now in a recent proceeding before the Interstate Commerce Commission brought by New Jersey interests supported by the Port Authority, the lighterage limits to the Jersey shore were extended beyond Bayonne to include Newark Bay and Port Newark and Elizabeth and down the Arthur Kills to Tottenville, to Perth Amboy on the Jersey side; so that means an extreme range of lighterage limits from 135th Street on the Hudson, down to Perth Amboy on the Jersey shore of fifteen, thirty to forty miles. Now, the railroad has to deliver its freight to any point along that waterfront that the shipper may require, and that is why they built up these independent fleets.

The Port Authority recognized there was a tremendous number of criss-cross movements, and began a study with the assent of the railroads and their cooperation. We made very exhaustive clockings of the movement of every individual tug and lighter in this harbor

for a test period of a week, of all the railroads and all the steamships, all the private industrial piers, etc., and we found a tremendous amount of overlapping and criss-cross movement. Lighter boats were moving side by side for different railroads and tugs of three different railroads were going all the way down to Bush Terminal with each other and each with one lighter in tow, and that lighter with only two carloads of freight on it, whereas the freight lighter can handle ten or more carloads of freight.

398 We have had the cooperation of the railroads in making the fact-finding studies in almost every case, but there their cooperation has largely terminated, except in the case of the Inland Terminal. After we made this factual study of marine activities we then borrowed some experts from them, and we dispatched on paper all of those boats with the idea of doubling up, giving two lighters to the same tug if they were going to the same place and loading the lighters heavier at the terminals in Jersey, and we found tremendous savings, running into several millions of dollars. We submitted that study to the railroads in an effort to get them to cooperate by unifying or consolidating or pooling their marine activities and saving these millions of dollars in terminal expenses.

We have found that the policy of the railroads is to unify such activities only to a very slight degree, and usually as more or less forced to do so by pressure of public agencies.

My department is cooperating with the Railroad Coordinator, Mr. Eastman, in this field. We have made a number of studies for him based on our records and data, and submitted our reports to him. His regional coordinators here in this district in the past have received these reports from us with apparently great pleasure, and have forwarded them to Mr. Eastman in Washington with very favorable comment. We are still cooperating with them and I hope that we will be able to obtain from him in time through the medium of the coordinators some real progress in bringing about some of these coordinating activities.

399 The MEMBER. Well, what is your interest in this coordination of marine traffic? What is your interest in reducing or seeing to it that a tug that is owned by the Pennsylvania Railroad should tow two barges or lighters instead of one?

The WITNESS. Because we were created by the two States to reduce terminal costs here in New York. The high terminal costs of operation of the railroads around this district reflect themselves in the high cost of living of the people living in this territory, and the two States feel that it is to their interest that the terminal costs should be reduced, and have established this agency to do the job, and it is a very thankless job. We keep plugging away to try to get the carriers to reduce their costs and we are more or less without authority to compel them to do it, except by the economic pressure we can put on them by making a study and showing them it will be to their own financial interests to perform certain of these consolidating operations.

The MEMBER. Well, is it true that in the first instance the reduction of cost will inure entirely to the benefit of the railroads?

The WITNESS. You say in the first instance, yes; the first initial saving will be made to the railroads, but as the railroads save money those savings invariably reflect themselves over a period of time, or should, and under the I. C. C. Rate Case, usually in time works that way, they reflect themselves in all the railroad freight rates, for they are all predicated upon over-all cost.

The MEMBER. What is your ultimate objective about it; is it the reduction of costs to the railroad?

400 The WITNESS. Our ultimate object is to reduce the cost of living in the Port district and the cost of doing business, the cost of handling freight through the Port district. We are in competition with other ports along the coast for export and import trade, and they are doing everything they can to reduce their terminal costs by providing in the case of some of these ports like Baltimore, Boston, and Philadelphia, piers for steamships to dock at practically no expense to the steamship. We are in competition here in New York where we have high pier rentals for steamships, to get shippers to route the foreign trade of this country in and out through the different ports and give us our fair share of it, and we lose out as our terminal costs increase, because shippers go elsewhere; they find cheaper routes. Railroad rates from the interior of the country to the north Atlantic ports are generally cheaper to Baltimore, Philadelphia, and Norfolk than they are to New York, and it is only by giving expedited service and good terminal handling that we are able to participate in that business and overcome the rate handicaps that those other ports enjoy. And that is our principal interest in this terminal problem, to reduce the terminal costs and get that trade.

Mr. COHEN. Mr. Wilson, you are familiar in a general way with the language of the Interstate Commerce Commission in the New York Harbor case; do you remember the phrases there which said York and railroad facilities be unified, that it was essential
401 that they be unified so as to reduce the expensive cost of operation at the Port of New York?

The WITNESS. Yes.

Mr. COHEN. And is it pursuant to those admonitions from the Interstate Commerce Commission that the Port Authority was created by the two States and you are now carrying out the aim to achieve that result?

The WITNESS. In a general way; yes.

At the time the Bi-State Commission was studying this local terminal problem in 1917 to 1920 most of our freight traffic on the highways was handled by horse-drawn equipment. The radius of activity of the horse is limited to what he can do, how far he can go in a day with a heavy load and return to the stables at night. That resulted in the development of a multiplicity of freight stations along the waterfront, each one within a short distance from where

the horse could haul to and from. There was not any material amount of long distance highway travel. The ferries were purely local facilities to serve the intercommunication needs of the communities local to the two sides of the Hudson River. As time went on, and after the World War, due to the impetus that the war gave to the automobile industry, both pleasure cars and motor trucks came into the field in increasing numbers. The old facilities for horse-drawn equipment, the old ferry boats and their smaller terminals, restricted and narrowed and cramped purchases, soon became filled and cluttered up with an ever-increasing swarm of motor vehicles that backed up from these ferry terminals in lengthening lines,

402 until it got so bad around here in 1925 that it was quite an adventure to cross the Hudson River on a holiday and weekend and expect to get home the same night. The lines of cars waiting at these ferry terminals extended literally for miles and miles in many cases, and it took hours to get on these boats. Our own investigators and our own clocking men know these facts. I have seen them myself and we have clocked them many times.

These ferry boats did a large business, as much as they could with their limited facilities. It was a very profitable undertaking, and I imagine they paid off all their capital investment and liquidated their investment time and time again before the Port Authority ever came into the picture.

I am trying to trace the development of this highway program and how it came about in a natural and evolutionary way. The movement of freight had claimed the Port Authority's attention up to about 1924, but then the growing pressure on our trans-Hudson highway facilities, which were the ferries, became so great that it was beginning to interfere seriously with the movement of a good deal of our freight; these ferry terminals are on the same marginal street along the waterfront that the railroad pier stations are on, and when you pile the ferry congestion on top of the pier station congestion, that street practically becomes impassable, and just becomes a parking lot instead of a highway. There are photographs in the Red Book which indicate the congestion—photographs of a long line of trucks waiting at the pier stations.

403 So that finally a conference was called and the Port Authority was asked by the two Governors to investigate this highway condition because we had concentrated up to that time mostly on freight. We set up a staff for that purpose, we were given some special funds to provide that extra staff, and we studied this whole highway problem along the Hudson River and along the Arthur Kill and the Kill van Kull Rivers between New Jersey and New York, and we found a very definite need for additional facilities. The total highway traffic across the river, the interstate line, had practically doubled from 1915 to 1925; increased 150%, from five million to around twelve and a half million per year; and from 1925 to 1935 it has doubled again from fifteen million to thirty million. So that it was a gigantic problem that had to be faced in a

big way. We found in our staff investigations that in addition to certain physical handicaps, there were financial handicaps in trying to improve facilities of this magnitude. It was a relatively simple or simpler task to bridge and tunnel the Harlem River or the East River because they were narrow streams and had good rock bottoms for foundations and piers, but the Hudson River was a mile wide and was the bed of an old canon, filled with silt, three or four or five hundred feet in depth, and the actual engineering difficulties led to gigantic costs for a single facility. It would run up some thirty, forty, or fifty million dollars to provide one crossing, and private capital up to that time had not been able to do it for highway purposes, although there had been in existence charters for

404 constructing highway crossings over the Hudson River practically ever since the Civil War. There were two charters granted by the Legislatures for constructing highway facilities across the Hudson River along about 1866 or 1867; then there was the famous Federal Charter granted to the North River Bridge Company for a bridge across the Hudson, first at 23rd, later at 57th Street. That charter was granted in 1890, and forty-five years have elapsed and that company has been unable to finance and carry out the program. So that just as the provision of highway facilities generally is necessary to take care of the needs of the local population, so we studied the provision of extension of those highway facilities with the idea of connecting up the highway system of New Jersey with the highway system of New York, and make it a continuous highway in this Metropolitan district. It was submitted to the Legislature, this rather comprehensive study.

Before that time, over the East River, from the easterly side of Manhattan Island, when the Port Authority began, there were in existence four bridges which constituted part of the highway system of the City of New York. They were the Brooklyn Bridge, Manhattan Bridge, Williamsburg Bridge, and Queensboro Bridge. But there were no bridges connecting New York City with the New Jersey mainland. There was no vehicular highway of any kind between Manhattan Island or Staten Island and New Jersey before the Holland Tunnel was opened. The Holland Tunnel was the first vehicular connection between New York and New Jersey within the Port district. It is my information as a public 405 fact, that the Holland Tunnel was financed, as was the Camden Bridge, by New Jersey by means of a bond issue, and it appears from the statute passed by referendum vote that the bonds of the State of New Jersey were to be secured by the tolls and revenues derived from those two enterprises. The State of New York appropriated its \$25,000,000 for the Holland Tunnel out of the annual appropriation.

In the initial projects of Port Authority, to-wit: the Goethals Bridge and the Outerbridge Crossing between Staten Island and New Jersey, with reference to the economic practicability of the steps, we had no credit with which to get started; and in order to

provide underlying equities or a cushion on which our bonds could be sold the States agreed to advance in the nature of a second lien on the facility, roughly 25% of the cost. The Port Authority was to sell bonds to the public for 75% of the cost. After the public had been paid back on its bonds the Port Authority was to pay back to the States its 25% advance, all out of toll earnings from the facilities. That is the initial plan. That same plan was followed in the case of the George Washington Bridge and the Bayonne Bridge. In the case of the George Washington Bridge the States advanced about \$10,000,000.00, that is, about 25% of its cost. The exact figures are in the Stipulation of Facts.

In the case of the Holland Tunnel, however, which had been built by these New Jersey bond issues and by a direct appropriation in New York, when the Port Authority took it over from the
406 States for the purpose of pooling all the vehicular interstate crossings in the Port District, under a dually announced State policy, it became necessary to satisfy the sinking fund requirements of the New Jersey bonds which constituted a trust agreement with the bondholders. Therefore the Port Authority sold a bond issue for the entire cost, to date, of the Holland Tunnel, which is \$50,000,000.00, and paid each State half of it, thus liquidating 100 cents on the dollar the indebtedness of both States for that facility. In the case of the Inland Terminal there was no cushion provided by anybody and the Port Authority sold all the bonds needed for the full one hundred per cent investment. Neither State appropriated any funds for the construction of the Commerce Building housing Inland Terminal No. 1.

In planning street and highway approaches to the Port Authority tunnels and bridges the Port Authority has connected them with the highways. In the case of the George Washington Bridge on the New York side the Port Authority had to acquire about four solid blocks of Manhattan property which was fully developed and had high-class apartment houses on it; and it built an elaborate system of approach ramps down to Riverside Drive, and is now building a vehicular tunnel under Washington Heights, carrying the New York approaches of the bridge clear over to the east side of Manhattan Island where it will connect with the avenues on the east side of the Island, and thus making fanwise distribution to Riverside Drive for
407 local streets on the west side of the Island and north and south on the east side of the Island. The City of New York is not contributing to these highway connections and expenses. The Port Authority is paying for all of those improvements on Washington Heights. The ramps down to Riverside Drive have been dedicated to the City, because they are also used by local traffic as well as bridge traffic since they have been completed. The tunnel under Fort Washington Heights which is not yet completed has not yet been turned over to the City. I do not say the plan is to turn it over to the City, I do not say that it will be desirable to turn it over to the City, but it will be used by bridge traffic, however.

On the Jersey side we cooperated with the State Highway Commission, and a very elaborate system of highway approaches was built, planned by our terminal engineers and partly financed by the Port Authority, and constructed by the State Highway Commission according to our plans which provided for the merging of three State routes in the vicinity of the bridges, Routes 1, 4, and 6, in a system of so-called flying junctions, which again get away from any cross-over movements at all or any graded or conflicting currents of traffic.

In planning these highway connections we were influenced by the lesson of the Brooklyn Bridge and all of those facilities. We found that the congestion of those restricted approaches which, as I said previously, were planned in the horse and buggy days when we did not have automobiles, are a limiting factor to the capacity of the bridge itself, and we attempted to provide approach facilities

408 which would allow traffic to flow in and out and develop the full maximum capacity of the bridge and tunnel structure.

At the Holland Tunnel on the New York side an entire square block of property was taken for development of an entrance plaza and a larger portion of the block immediately south of Canal Street on Varick Street was taken for an exit plaza. These were acquired by the Tunnel Commissions which built the Holland Tunnel with State funds, and they are operated as approach facilities for the tunnel.

On the New Jersey side of the George Washington Bridge the bridge approaches graduate into the State Highway system in an imperceptible degree. The bridge approaches run back to forkings of Routes 4 and 6 close to a mile from the end of the bridge before the different State routes fan out on their own. At the Jersey end of the Holland Tunnel, the Commissions widened two parallel streets, 12th and 14th Streets and a crossover street, going back a distance of four blocks or about a quarter of a mile from the end of the tunnel.

In the case of the Midtown Tunnel even more elaborate approaches are being built. The Midtown Tunnel comes into Manhattan at 39th Street and Tenth Avenue, immediately east of Tenth Avenue. In the block between Ninth and Tenth Avenues the Port Authority had acquired a north and south strip of property from 34th to 42nd Streets, a distance of about half a mile, and is building a new street. That entire district, roughly 100 feet wide, gets smaller at the end as the traffic requirements are less. That is for the first tube of this tunnel. Now, when the second tube is built alongside at a later date a similar new street will be constructed north and south between Eleventh and Tenth Avenues to serve the other tube.

409 On the New Jersey side of the Midtown Tunnel a great deal of property has been acquired in Weehawken and Union City for developing a series of ramps up the face of the Palisades and a new depressed high speed route through the top of the Palisades that will

not conflict with any of the north and south streets in that section of New Jersey, and that will go through the Palisades and will connect with the Jersey main highway route out on the Hackensack Meadows. Likewise, in the case of the Staten Island Bridges similar approaches were built. Traffic down there is much lighter. The bridge at Bayonne connects with Hudson Boulevard and one of the other streets of Bayonne and is carried over a whole series of railroad yards and terminal waterfront streets, there to land us in a section of the city that is less congested.

Similarly on the Staten Island end of the Bayonne Bridge a large abandoned quarry was obtained, partly filled in and a circular system of traffic laid out there. That was done also in the case of the Goethals Bridge at Howland Hook and in the case of Outerbridge Crossing at Tottenville, where large circular plazas were built to facilitate a right-hand movement of the traffic. On the Jersey side for the Goethals Bridge, a similar plaza area was developed, and again in the case of the Outerbridge Crossing. So a great deal
410 of work has been given to the approach facilities of these bridges, and to properly connect them to the highway systems so that they can be developed to the full capacity of these crossings.

The Statutory Comprehensive Plan says that the Port Authority shall cooperate with the State Highway Commissioners of each State so that trunk line highways, as and when laid out by each State, shall fit into the Comprehensive Plan. That cooperation has been carried on. It is in the charge of the Chief Engineer.

The Chief Engineer prepares plans, has a conference with the State officials on each side of the river and obtains the approval of the local governmental authorities for these plans before construction proceeds. The approaches to the new Midtown Hudson Tunnel run through three municipalities on the Jersey side, Weehawken, Union City, and North Bergen, and approaches have been laid out in cooperation with the municipal officials, the Port Authority paying for them. The Port Authority has not received any advances or second lien moneys or cushions from the State for the Midtown Tunnel.

Recurring to the historical development of the features of the Comprehensive Plan to the point where the two Governors gave directions after studying the highway problem, the outcome of the studies made at their request was the report which is included in one of our annual reports, recommending an uptown bridge across the Hudson River from Manhattan to New Jersey, north of 59th Street, and one or more additional tunnels south of 59th Street.

411 As a result of this report further conferences were held with the State officials resulting in legislation directing the Port Authority to investigate the possibilities of constructing one or more bridges, raising its own funds for this purpose, and the States appropriated moneys for traffic surveys and engineering surveys and design, so that we could make up accurate estimates of cost. Out of that grew the first bridge project in 1925 and 1926 for the Outerbridge

Crossing at the lower end of Staten Island, and the Goethals Bridge at the northwest corner of Staten Island. When those were under way and financed by the Port Authority with the aid of this 25 per cent cushion, further studies were undertaken at the request of the two States with respect to a bridge from Bayonne to Staten Island, and this originally recommended bridge uptown in Manhattan. This resulted in the same orderly process of traffic and engineering problems and reports and recommendations, estimates of revenues, expenses, and that led to the construction of these two facilities in the same orderly process. The construction of these facilities and the development of the plans were under the Chief Engineer; after the bridges had been started all traffic work was turned over to my department. I knew the character of the work before it was turned over to my department, from the records which have been turned over to us.

Before engaging upon the construction of these facilities, we made traffic studies. Each of the crossings involved substantially the same kind of a traffic survey, so a description of one will apply to all unless there are some special questions. The first step is a very careful clocking of the existing traffic crossing neighboring ferries and using neighboring highway routes. This involved putting a large force of investigators and inspectors in the field, stopping this traffic on certain test days at certain test hours at convenient points, and questioning the individual drivers as to where they are coming from and where they are going to, so that we can determine travel habits and routes and where the traffic comes from, what districts it is going to.

In the case of the two earlier bridges, the Outerbridge Crossing and the Goethals Bridge, whose traffic studies were started back in 1924 and progressed over a period of several years, but we have found it has been necessary in that work to make it practically continuous. We have a small staff of a few men who keep current records of all bridges and ferries throughout the Port District, and about once every five years we make a so-called origin and destination clocking to see what changes in travel habits have occurred during that five-year period, due to the development of new suburban areas or provision for new crossings or the abandonment of old crossings, or the like. So, having made these origin and destination clockings and having obtained statistical data on the number of people using certain facilities over a period of years, we calculated trend curves as to how the business is growing and project those curves into the future, based on certain formulae and processes that the statisticians and analysts have worked out from their experience over a long period of years. We allow certain factors to come in there—we call them “step-up”—that occur whenever you open a new facility. There is always a certain jump in the total volume of traffic when you open a new facility. It seems like you were pulling a plug and releasing some pent-up energy. People who have not traveled in the past because of the congestion and delays find a

new facility and they surge across it. That step-up runs as high in some instances as thirty and forty per cent on our facilities. As a matter of fact, the George Washington Bridge opened up an entirely new area of residences in Bergen County and that section of New Jersey, which makes for traffic. It has made the outlying areas more accessible to the heart of the district and thereby attracted people into those areas, outside of the congested sections of Manhattan.

MR. COHEN. Now I call your attention to Section 6 of the Legislation, dealing with the Comprehensive Plan, on page 43 of the Port Authority Statute Book (Stipulation Exhibit E): "The determination of the exact location, system, and character of each of the said tunnels, bridges, belt lines, approaches, classification yards, warehouses, terminals, or other improvements shall be made by the Port Authority after public hearings and further study, but in general the location thereof shall be as indicated upon said map, and as herein described." Now what was the technique or the process employed by the Port Authority, in which you participated, by which the studies and these public hearings are held before the official

determination of the exact location, system, and character of
414 any part of the Comprehensive Plan is made by the Port Authority? Are public hearings held before such operations?

THE WITNESS. Well, the general location of a facility is determined, first of all, by traffic needs, based on our traffic clockings, by determining routes of flow and where the various heaviest streams of traffic that converge on these waterways are apparently seeking to cross them. And having determined a zone, a focal point where there seems to be need of an improved crossing, then that location is preliminarily determined by the engineers, based on the physical geography and topography and sub-surface conditions, such as rocks and faults and strata, etc. And when those two have been made, when the engineers have completed their studies and arrived at a tentative exact location, then the public hearing that Mr. Cohen refers to are held to give everybody else, the public and any other people, agencies of the Government, etc., opportunity to comment on this preliminary and tentative location. In some cases some modifications are made, but, generally speaking, the work has been so thorough that there have been no substantial changes in the locations for these crossings.

(The witness continued his testimony as follows:)

It is part of the work of my department to bring together the statistics of traffic and potential revenues which furnish the basis for investors in Port Authority bonds and for their belief that the revenues will adequately support the operating costs, sinking fund requirements, and interest requirements. That work is done
415 by our Bureau of Commerce, under me. The technique or process by which my staff submits this information to investors is as follows: Having made traffic clockings and having applied our formulas to that data, we arrive at an estimated volume

of traffic which would use the new facilities, divided into classes, viz, buses, trucks, and pleasure cars. Then, by applying our best judgment as to what average toll rate we can hope to collect on those facilities without diverting traffic too much to other facilities, we apply those toll rates to the estimated volume of traffic and arrive at a certain annual income for the new facility. This is applied against the engineers' estimate of the cost of construction, and we deduct our own estimates of the cost of operating the facility—that is, the police, toll collectors, and the maintenance men—and we arrive then at a net revenue to apply against the debt charges. Meanwhile conferences are going on between the general officers and bankers for the purpose of estimating the rates of interest we expect to pay upon the sale of our securities. The best estimates are applied then to the engineers' estimated capital cost in getting at our debt charges, and rather complete financial statements are prepared showing the life of the bond issue, what the earnings from the bridge will be based on, the traffic and the toll rates less the operating expenses, giving a net figure to apply against the bonds outstanding in each of those years. And those statements are made available to the various banking interests who may be interested in bidding for the securities which the Port Authority then offers for sale on bids. The bonds are sold, the proceeds go into the treasury, and are used to defray the cost of production.

Our estimate with reference to the Staten Island bridges did not materialize in actual revenues. Those bridges are now covering all of their operating and maintenance expenses, interest charges, and about half of their debt service charges. The remainder is taken from the general reserve fund.

The George Washington Bridge is paying all of its operating expenses, maintenance expenses, interest charges, and in addition is setting aside a surplus for amortization.

The Inland Terminal at the present time is earning all of its operating and maintenance expenses, interest charges, and is also setting aside a surplus for amortization. That was financed on a rental program. At the present time the building is now about 95 per cent rented, so that it is up to its full rental program in about three years instead of five.

The Holland Tunnel has operated to produce a surplus right along, and it still does, that part of the surplus going back into the general reserve and making up for what has to be paid to meet the deficit on other enterprises, or other projects of the Port Authority.

With reference to the Midtown Tunnel, the two tubes were planned to cost \$75,000,000.00. When the depression came the Port Authority was unable to go forward with those two tubes since we were not able to sell our bonds. In the first instance the Port Authority obtained the money with which to build the Midtown Tunnel in the form of a credit from the Federal Government; it drew down the money as it needed it.

417 Mr. COHEN. Now, taking the so-called belt lines that are contained in the statutory Comprehensive Plan now forming part of the Compact, I wish you would take your finger and indicate to his Honor the lines of the so-called Belt Line No. 1. (The witness indicated on the map.)

The WITNESS. Belt Line No. 1 is practically the keynote of the proposed belt line system for the purpose of connecting up the railroads on the New York and New Jersey side of the port. It starts up in the Bronx, and has a connection with the New York Central and New Haven Railroads in the vicinity of the Port Morrisania yards, and it follows the route of the New York Central Railroad over the Hell Gate Bridge down to Queens, past Fresh Pond Junction and East New York; then following the tracks of the Long Island Railroad, the Bay Ridge Division, it goes to Bay Ridge—to the Bush Terminal on the South Brooklyn waterfront. Then by a proposed tunnel it goes under New York Bay and comes out on the Greenville section of Jersey City. In Jersey City the connections are with the facilities of the Lehigh Valley and the Pennsylvania Railroads, thence west across Newark Bay to Oak Island Junction, and south along the Central Railroad of New Jersey route to the vicinity of Elizabeth, and thence into Staten Island along the north shore of Staten Island, following the B. & O. Staten Island Rapid Transit route to St. George. Another branch of the belt line turns north at Greenville, and runs north through Jersey City, partly following existing rail routes, partly new construction, to a connection with the north-

418 erly group of railroads, Lackawanna, Erie and West Shore on the Secaucus Meadows. The principal feature of this line of this new construction is the proposed tunnel under the Upper Bay. That is one of the proposed Belt Lines of the statutory Comprehensive Plan. It is not yet in operation. The rail facilities on the two ends are in operation, but not the tunnel as yet.

(The witness continued his testimony as follows:)

My Department, with a view to effectuating the Comprehensive Plan as rapidly as economically practicable with regard to the Belt Lines, first made the studies of Belt Line No. 13 which I have previously referred to. Then we made a study of this Belt Line No. 1 project to see if we could finance and divide the Upper Bay to connect the two railroad systems on the two sides of the Port. That is what is called the Greenville-Bay Ridge Tunnel route. That is a route approximately four and a half miles long passing under the main ship channel of the Port, and lying a large part of the way in shallow water on the flats on the Jersey side. We made very careful studies of that. Our engineers estimated costs. We had the cooperation of the railroads in making available to us engineering studies which they had made. We collected railroad data on the interexchange freight that is moving today by car float between these different railroad terminals that are shown in red on the map on the Jersey side, and the various railroad points on the New York

side, principally the terminals at Bay Ridge, Brooklyn, Long
 419 Island City, and Oak Point in the Bronx. Those are the principal terminals to which the Jersey railroads float inter-change cars. The difference between inter-change cars and local harbor car floatage is that the inter-change traffic is put on the float at one end of the float haul and is taken off at the other, whereas the pier station floats its cars, that is, the cars are put on the floats in Jersey and remain on the floats at destination, and then go back on the same floats to the rail terminals.

Now, having assembled this data from the different railroads as to the volume of traffic now moving, and having obtained it over a period of years to determine the trend, we estimated the volume, the number of cars by the tonnage that would use such a tunnel if built. And applying that in the same manner against our engineering cost, and actually calculating with the aid of the railroads, the present cost to the carriers of floating this much traffic, and then, as estimated, the cost of railing it through the tunnel, we arrive at a difference between the present and the proposed method of railroad operation that gave an indicated saving of \$5,000,000.00, which, applied to an estimated cost of construction of \$50,000,000.00 in round figures, gave us an estimated 10-per cent return on the facility. That seemed to us a reasonable basis on which to open negotiations with the carriers, because this was not like a highway, tunnel, or bridge. You could not build a railroad tunnel and put a toll gate at the end and charge every car that went through it 50 cents. You would

420 have to have a contract with the railroads that they would use it and route their whole trains through it and run it in connection with their regular service schedules on each side. When we came to that we found the railroads reluctant to do that. They challenged the figures that we had prepared, and that led to a series of conferences with the railroad officials. They appointed engineers and operating men for further studies, and a study of that kind, a joint study, is now going on at the present time, under my general supervision on behalf of the Port Authority, to test those old figures in the light of changes that have taken place in recent years due to the depression.

There is no way that I can see that the Greenville-Bay Ridge Tunnel can be provided unless the railroads are willing to use it, before they are satisfied that it will be a matter of economy to them on the carriage of freight across the harbor.

The Port Authority has never contemplated any plan whereby it would take over any of these railroads now embraced in the proposed belt line. We feel that the operation of these facilities should be left in the hands of the local railroad managers. They know how to run them. The Inland Terminal itself is being operated by the railroads by a joint labor force. The Port Authority is not in the railroad business at any point in the harbor. All that it undertakes to do is to take existing facilities, as it did in Belt Line No. 13,

and by the process of persuasion or by building additional connecting links and by adding such new facilities as are necessary to round out that whole property, make them into a coordinated whole, as required by the statute. I think that is a fair statement.

421 The Inland Terminal fits into the Comprehensive Plan in the following way: The Comprehensive Plan for Manhattan Service contemplates giving up the pier stations and moving the railroad activities into the interior of the island. That has to be done in three steps: first, by providing inland dumps for L. C. L. package freight, which is what these inland terminals are for; second, by the carload delivery—a store delivery service on carload freight; and, third, Union Terminals for perishable freight on pier stations.

Section 4 of the Comprehensive Plan under the heading, "Manhattan Service" says: "The Island of Manhattan to be connected with New Jersey by bridge or tunnel or both, and freight destined to and from Manhattan to be carried underground so far as practicable by such system, automatic, electric, as is hereinafter described, or otherwise, as will furnish the most expeditious, economical, and practicable transportation of freight. * * * Suitable markets, Union Inland Terminal stations and warehouses to be laid out at points most convenient to the homes and industries upon the Island." It has not been found practicable to do that service by the automatic electric system described. It has been found decidedly practicable to use the motor truck, together with tunnels and bridges across the Hudson to achieve the same result. That was what led to treating the Inland Terminal as part of the same system of service described in Section 4 of the Comprehensive Plan, and that determination was made after public hearings and after study by the Port Authority in accordance with the statute.

422 I have now covered all construction projects which we have so far constructed or have under construction at the present time, meaning by the word "projects" not merely functions of the Port Authority, but things that are to be brought into being like the Inland Terminal, the Midtown Tunnel, etc. However, if "projects" include all matters we have studied and are studying with the expectation that they may be some day brought into being, when economically practicable, I have not covered them all. The Comprehensive Plan contemplated, and the Bi-State Commission's report indicated, that the Comprehensive Plan would take a very long time to be effectuated. All Port Authority structures are built looking well into the future, in contemplation of increased demands for service, and not only for today.

For example, the George Washington Bridge has an estimated traffic capacity of 30,000,000 vehicles a year, and we handled last year about six and a half million, so we have allowed there for growth in the future. As a matter of fact we have not completed the bridge. The center section of the roadway is as yet unpaved because we do not need it at this time. We have ample capacity now without that.

Later on that will be paved and it will increase the capacity. Then there is a provision made in the steel upper structures, sufficient steel has been added to give us sufficient strength to add a lower deck on the bridge for rapid transit; when and if the development of rapid transit in the northern section of New Jersey requires such a facility across the river it can be provided in that way at much less
 423 expense than providing a brand new bridge just for rapid transit. The approaches I have described are also laid out looking well into the future. The moneys, therefore, which the Port Authority raises on its bonds must be sufficient to provide approaches and facilities not merely adequate for today's service, but for service for a long time to come, as it may be augmented. And except for the advances and appropriations made by the States and the turning over the revenues from the Holland Tunnel, all these moneys must be raised from the Port Authority's own securities, unsupported by the credit of the States or by any taxing power. Hence, these facilities are not built as the City of New York built its bridges across the East River, receiving the moneys out of appropriations from the taxes of the community, or as the State of New York has built other bridges across the Hudson. We have no way of raising tax money. Applying that especially to the Inland Terminal, studies were made under my general supervision to see to it that the prospective revenues from the entire building would be adequate ultimately not merely to pay for the Inland Terminal but also to pay for the entire land and building out of the bonds. The States supplied no funds whatever by way of backlog or cushion for that enterprise. It is the simple fact it never would have existed today if it were not for the fact of the revenues derivable from the upper stories above the rail terminal.

The Bush Terminals are on the south Brooklyn waterfront about six miles on an air line from Inland Terminal No. 1. [The
 424 witness indicated the location on a map.] There is a direct rail connection from it to the Long Island Railroad, but it is reached from New Jersey by car float.

With regard to car floats there is a relationship which the ice and fog problems of the Port bear to the work that the staff of the Port Authority has had to do in effectuating the Comprehensive Plan. The movement of freight about this harbor by water, of course, is interfered with whenever there is any physical condition such as fog or ice that interferes with the movement of car floats. Our experience and the records kept by the Federal government on fog conditions show that on the average, year in and year out, we can count on their being serious fog delays about 5 per cent of the time. When that occurs the car floats do not move or move only in a very limited way, with the result that freight piles up in cars at the Jersey terminals of the railroads and backs up at the stations in Brooklyn, Queens, and Manhattan, causing congestion and added expense.

Likewise with ice; ice conditions start in January each year and continue well into March. The ice that forms in the various tidal estuaries of the port—you can see from the map, from the blue areas—how much water there is in the port—this ice forms in these quiet waters and up the Hudson River above the George Washington Bridge where you get most of it and that comes down with the tides as it is broken up by the tides and winds, and the prevailing westerly winds drive that ice into the slips and the car float bridges on the east side of the port along the Manhattan waterfront and
425 it is blown around the lower end of Manhattan Island and carried by the tide up the East River and packed into the slips and car float bridges along the Brooklyn and Queens shore, until at times it is impossible to move these car floats and in fact any kind of small harbor craft, lighters, coal barges, oil barges for supplying the various local terminals all out through the residential section of Westchester County to the north of Manhattan and out through Long Island, Nassau, and Suffolk Counties, up through Newark Bay, the Hackensack and Passaic Rivers. Most of the fuel for the suburban homes and for the gasoline filling stations throughout this area is distributed by water from the major coal terminals of the railroads which are located in Jersey City and down in the Amboy section of New Jersey. The cars are dumped in the barges and those barges towed up to unloading points on Manhattan Island up into Westchester, and then tracked short hauls to the homes. Oil is handled in the same way; fuel oil for home heating, and gasoline for the local filling stations is loaded onto tank barges along the Arthur Kill and in the Bayonne section at the big oil refineries and those barges are towed or in some cases proceed under their own power to similar waterfront terminals throughout this district.

There are times in these ice conditions when the railroad has to put two or three tugs behind a ferry boat and one ahead to get the boats into their slips. I personally have seen cases on the Hudson River where the ferries were approaching Manhattan, where the ice was packed, piled in by the winds from the west. It has
426 been packed in there so dense that in one case I recall a passenger on one of these ferry boats jumped off into the river and walked ashore over the packed ice, slipping around until he was finally lassoed by a man with a rope and hauled onto a small tugboat.

Ice conditions at the present time are rather bad in the harbor. We are getting a great many calls at the Port Authority from these outlying points, where they can't get the coal barges and the oil barges in. We are getting calls for assistance in getting them some relief, to prevent fuel shortages.

While we have some ice conditions on our bridges we have none in the Holland Tunnel, of course—we never have had a time when that traffic was completely stopped. In fact, in the severe weather of the last two weeks, we have kept running practically normal. In fact,

the facilities for crossing the river are, in many cases, the best part of the highway journey for most of these cars. We keep plows and men at work, and they keep the bridges well cleaned off, so that has provided a safety-valve for all the people on the east side of the port. Now they are no longer faced with shortages, not only of fuel, but of food.

We have had occasions in the past when there have been thousands of ears of foodstuffs, perishables, flour, et cetera, tied up on the Jersey shore, so that it was not possible to move it across the river by car float.

There is a very decided advantage, in times like these, to those who drive motor vehicles, in coming through the Holland Tunnel or over the George Washington Bridge, as compared with coming on 427 the ferry boats. They are not subject to any delay. They come across in a few minutes—three to six minutes; whereas the trip by ferry, under conditions such as these, may take anywhere up to an hour in fog conditions. The ferry boats have gone astray, and have ended up miles away from where they started, and trips of an hour or more under such conditions are the normal thing.

There used to be a good many ferries running across from Manhattan to Brooklyn and Queens. There were ferries from the Battery to Hamilton Avenue and to Atlantic Avenue, Brooklyn. There was a ferry across from the foot of Wall Street, to Fulton Street, and ferries at 23rd Street, 34th and 9th Streets. There may have been more. I do not think these ferries are still in operation. The Fulton and Wall Street ferry is definitely out of existence. The 34th Street ferry went out of existence a number of years ago.

I was educated as an engineer and I have spent 15 years studying this traffic problem generally. Also, I am charged with familiarizing myself, with the assistance of my staff, with all these conditions, not only here, but in other parts of the country. In my opinion, the normal effect of establishing a bridge over which motor vehicular traffic, truck and passenger, could go, as compared with the ferries, disregarding the ice and fog, is immediately to quicken up the whole tone of a district. It facilitates travel and transportation. It makes it easier for the people of the two sides of the river to do business with each other. It promotes exchange of commodities. It 428 broadens out the field of activity of stores which are able to make deliveries out in the suburbs, which they were formerly unable to do on account of the time factor. It unquestionably eliminates delays and it contributes in a very marked way, over a period of time, to the increasing prosperity of any district in which such an improved facility is located.

There has been a marked increase in the motor traffic through the Holland Tunnel over the last two or three years, particularly in the last year. In the last six months we have run over eight thousand motor trucks a day, compared to the earlier years, of only half of

them. These trucks are of all kinds. They are long distance, short distance, large corporations, individual trucks owned by single owners and drivers; trucks coming from the south, the Carolinas, Georgia—produce trucks coming from Michigan, Wisconsin, the middle west. There can, of course, be no question that there is economy in the operation of these trucks without delay compared with the great delay due to inability to cross a stream or body of water at a congested point. The longer the truck is on the road, the greater the expense. The driver, unless he is the owner-driver, which very few of them are, gets paid by the hour, and if they are out more than a certain length of time, eight or nine hours a day, they get time and a half for overtime, and all that adds to the expense of the operator of the truck without increasing his revenues any. He is paid so much a ton for the trip, regardless of the time it takes. We

429 have had a very great many instances of that kind in our discussions with truck drivers and truck operators in this district as to our facilities in competition with the ferries, where they have felt that possibly they could not afford to use the Holland Tunnel because the rate was 25 cents a vehicle more than the ferry, or more than by ferry. But we have been able to show them that by using the Tunnel, they were able to make a round trip and get the truck back to the barn so much sooner, that it would save them that much more, it would offset the extra cost of the tolls through the Holland Tunnel.

In the light of my knowledge and experience, I would say that the creation of these interstate crossings affects business and industry to the extent of improving the business and industry and making the operating costs lower than they would otherwise be, thus increasing their net revenues for whatever purpose is necessary to use those earnings.

I do not know of any private businesses which have been supplanted by anything that the Port Authority has done in all of its history. The only thing I can think of is one small ferry down on the Staten Island shore which used to run across from Carteret about the middle of the west side of the island, mostly handling factory employees to oil industries; largely pedestrian traffic. That has gone out of business since the Staten Island bridges were opened, but it was on its way out of business prior to that and would unquestionably have gone out of business whether the Port Authority bridges were built or not, due to the influence of the Jersey
430 State Highway System drying it up. There are ferries at each end of the island anyway, and this ferry was kind of caught in the middle, due to improved highway facilities, to automobiles; and that ferry would serve a useful purpose in the days of horse-drawn vehicles operating locally in the Carteret area; but it no longer performed a useful function among the automobiles after the horse operations.

The congestion occurred prior to the establishment of these bridges and tunnels at the ferry terminals on both sides of the river in Manhattan. It was due to the buildings, to the intensity of the development of the surrounding property along the waterfront streets. It has not been possible—practically, at least, it has never been done by the city—to expand or enlarge any approaches to ferry terminals. They were just as they have always been, debouching right on a waterfront street without any special facilities for unscrambling the ferry traffic from the general pier traffic.

Of course, when the automobile came along, much bigger and many more of them, they would stand lined up waiting for these ferries, which have an intermittent service—not a continuous speed like a bridge or tunnel. And, with the boats sailing fifteen, twenty, thirty, or thirty-five minutes apart, these lines would build up and extend out into the streets, and, therefore, interfere with the movement of the city traffic north and south along the west side. In some cases, it would extend over in front of adjoining property.

431 pier stations, and cross streets, blocking the movement of crosstown traffic, blocking the traffic going to and from the pier stations. Providing the tunnels and bridges has made it possible for a great deal of that traffic, particularly the more high-speed pleasure car and bus and long-distance truck, light delivery truck, to use these continuous speed facilities of the bridges and tunnels, and thus relieve the street congestion in the vicinity.

Mr. COHEN. I show you a photograph, and ask you if this is produced from your department as a photograph of trucks waiting to cross the Hoboken Ferry at Manhattan, and prior to the opening of the Holland Tunnel, taken in 1920.

(The photograph referred to was passed to the witness.)

The WITNESS. Yes, I recognize that picture. That is a picture taken at Hoboken, looking west from the ferry terminal toward the interior of New Jersey, the Palisades showing in the background; and this is a line of trucks and horsedrawn equipment waiting to get on the Hoboken ferry at the point where this is taken, which is about six or seven blocks away from the ferry landing. The picture was taken in 1920 before the adoption of the Compact and the Comprehensive Plan.

(The photograph referred to was received in evidence and marked "Petitioner's Exhibit No. 1," and made a part of the record. This Exhibit is included in the record as a physical Exhibit.)

432 (A second photograph was passed to the witness and identified as a reproduction of photograph appearing on page 293 of the Joint Report, Stipulation Exhibit B.)

That photograph shows the situation of West Street around Houston Street on piers 40 and 41, and the traffic congestion in 1918. It was taken in Manhattan looking northwest. It shows the shed houses of the railroad piers and steamship piers and trucks standing out

in the street waiting their turn to get in and get freight. In some cases, either due to congestion on piers or congestion waiting to get in, the freight is unloaded out in the streets and piled on the streets so as to release the equipment.

(The document referred to was received in evidence and marked "Petitioner's Exhibit No. 2" and made a part of this record. This Exhibit is included in the record as a physical Exhibit.)

(A third photograph was passed to the witness. It was identified as a photograph taken in 1918 on pier No. 17 on Manhattan Island around Barclay Street, for the Bi-State Commission.)

That photograph shows that at that time there was practically no automotive equipment. I think there were only two or three motor trucks visible in the picture in a total of possibly twenty, or only one pleasure car. Everything was horsedrawn. The same conditions obtained, of piling freight on the streets and helter-skelter parking of trucks interfering with any through movement.

433 (The document referred to was received in evidence and marked "Petitioner's Exhibit No. 3" and made a part of this record. This exhibit is included in the record as a physical exhibit.)

(A fourth photograph was passed to the witness and identified as taken on Pier 23, south of Beach Street, between Beach and Duane Streets.)

Pier 23 is the New York Central Railroad Freight Station, about a half mile south of the Holland Tunnel on the west side of Manhattan Island, and south of Inland Terminal No. 1, which is at 14th Street.

(The document referred to was received in evidence and marked "Petitioner's Exhibit No. 4," and made a part of this record. This exhibit is included in the record as a physical exhibit.)

(A fifth photograph was passed to the witness and identified in the photograph as Pier 23, taken in 1918 from another view.)

That is another view of the same pier, but it is taken a little further north, and a little further away to give a larger field. It shows the same lineup of equipment which is congesting the street.

(The document referred to was received in evidence and marked "Petitioner's Exhibit No. 5," and made a part of this record. This exhibit is included in the record as a physical exhibit.)

434 Mr. COHEN. I should like to call your attention at this point to certain paragraphs in the Red Book, the joint report (Stipulation Exhibit B), appearing in the summary, which we said would be about all that you would need to read on this.

"Adequate reorganization of the waterfront as a whole, like adequate reorganization of the railroad systems, can be brought about only by large scale operations under the direction of a central authority working from a Comprehensive Plan."

On page 31: "Highway accessibility—of the three forms of accessibility, rail, water, and highway, essential to every successful waterfront development, highway access is the most difficult to prescribe

in advance of the detailed design of the developer. The highways and driveways in the immediate vicinity of the development are details themselves to be worked out in consonance with the rest of the design. Highway communication between different sections of the Port is a part of the problem, however, and one to which the Port Authority can well give attention. The main thoroughfares must be adequate, as in present instances they often are not, to carry the truck traffic which the development will induce. Where waterways intervene, methods of crossing them must be found, and this will naturally lead to the consideration of ferries, vehicular tunnels, and bridge; crossing the majority of the wider waters of the port by any of these means usually involves at least two municipalities directly, while other municipalities more remote from the waters may be prospective beneficiaries of the contemplated improvement. Therefore, provision of suitable highway access to the different sections of the port becomes a problem, and an important one, for a joint agency such as the Port Authority."

I direct your attention to this, Mr. Wilson, as part of the report of the predecessor, the Bi-State Commission, in 1921; and I ask you now whether, as a result of the studies of the Port Authority and of your connection with them and under your supervision, there has been any change in point of view with regard to this principle that I have just read to you.

The WITNESS. No. There is no change in that principle.

The MEMBER. Do I understand from that that you would reiterate today what has been said there, as of a prior day?

The WITNESS. No. I mean that the principle of congestion forming along these waterfronts, and the need for improved highway facilities and crossings of these waterways, to tie in the two highway systems on each side, is just as much a need today as it was then, whenever congestion and delay begin to form at any of the existing facilities. The process keeps repeating itself as traffic grows, you see.

(The Witness continued his testimony as follows.)

With regard to the problem of congestion referred to at page 31, of the Bi-State Commission report, the use of Holland Tunnel and the subsequent determination by the Port Authority of

the location of the Midtown Hudson Tunnel and the George Washington Bridge, tended to solve the problem in the following way. The great density of traffic across the Hudson River has always been 42nd Street and south, centering around the ferry terminals. The provision of the Holland Tunnel at Canal Street acted as a main drainage channel, or artery, for a tremendous volume of traffic—relief for the ferries. The tunnel handles about 11,000,000 vehicles a year, and the ferries—any one individual ferry, probably, does not run very much over a million and a half—the big one possibly two million, but no more than that; so that any one of these new fixed facilities such as a bridge, or a tunnel, immediately pro-

vides a capacity equivalent to several ferries, and provides relief for these ferries and clears up the congestion that existed in the streets surrounding their approaches.

The Inland Terminal ties in with this relief of congestion. The railroad pier stations are clustered around the rim of Manhattan Island south of 59th Street. There are about forty-five piers in the past that have been used for such facilities. At the present time there are somewhere around thirty-eight—still in use. It is necessary for merchants to go from their store doors and factory buildings in the center of the island to these various piers with crisscross movements and long hauls up and down the island in order to reach a particular pier station where there may be a particular car that they want to get freight in going west. Under the pier station method of operation, the railroads will park empty cars on car floats alongside the pier stations, and they will designate a certain car on a certain float, we will say, for Chicago. Well, there may not be any other car for Chicago on that particular railroad at any of the other pier stations, so that the merchant, if he is up at 35th Street, or 36th Street, and that car happens to be down parked on a float in the vicinity of Barclay Street, has got to drag his freight and his truck all the way downtown, until he gets to that particular pier where that particular car is berthed. Under the Union Inland Station idea, he will take it to the nearest of these union stations, and it will be sorted there, and it will be hauled from there to the railroad car that is most convenient for the movement, shortening the haul for the merchant very materially.

Mr. COHEN: I wish you would look at Exhibit 3. And, I direct your attention to the truck marked "Humberto Olive Oil." That truck is not fully loaded, is it?

The WITNESS. No.

Mr. COHEN. Is that typical of the situation you referred to in the earlier part of your testimony, about the expensive operation by business in being obliged to ship a partially-loaded truck to one of the pier stations, instead of being able to take it thoroughly loaded with all its shipments to one union station?

The WITNESS. That is typical of a partial load on such a truck. It is merely a fragmentary load. Our studies and clockings showed that the average load coming to these pier stations was between one and two tons, while these trucks have capacities of two and three tons.

438 Mr. COHEN. I will read to your Honor, so as to tie up the record for you, from page 25 of the Red Book (Stipulation Exhibit B):

"Bound up with the railroad freight problem in Manhattan is the system of markets and food distribution. This is one of the most important as well as difficult phases of the port problem, one that comes closest to the public, in as much as it affects the price and quality of the food put on the table at every meal."

Then appears the statement that: "New York is the market center of the country"—and it refers to the foodstuffs coming from all over the country. "On the lower west side of Manhattan has grown up the primary market for these goods. Here the railroads have pier stations devoted mainly to foodstuffs and several of the companies and transoceanic steamship companies handle foods in large quantities, and have their piers there." I am trying to shorten this, sir, by asterisks. "Each stop of the food means additional delay, additional handling, additional waste, and additional cost to the consumer. Yet the system is the growth of many years, and those engaged in it are seemingly agreed that it cannot successfully be changed. No one will deny that the present system is highly unsatisfactory. There must be fewer handlings."

The WITNESS. In the activities of my department, there are included such matters as dealing with the Federal Government, and urging them to adopt measures in the interest of relieving conditions here; like providing more ice-breakers.

439 That field of activity can be classified as protecting the commerce of the port, and we have engaged in a number of such activities that involve the regulations for the better conduct of the Port's Commerce. In the case of ice-breakers, which you mentioned, I mentioned some time ago that ice conditions in the harbor, with these tidal estuaries, interfere with the movement of fuel oil, coal, building materials, et cetera, and last year and this year, in particular, we have had numerous requests from these outlying points for assistance in getting the harbor opened. We have taken those matters up promptly with the Coast Guard, which has a limited number of ice-breakers, but they are totally unequipped to do the full job, and so we arranged to have legislation introduced in Washington to provide additional ice-breakers for this purpose with the Coast Guard's approval. The bill passed Congress, and was vetoed.

Our activities are to survey the situation, and to take up with the appropriate Department of the Federal Government, that matter, for the purpose of securing the necessary relief. We have done that over a period of years in a great many different activities. We have also gone in and made a thorough survey of the movement of dangerous cargoes on boats about the harbor; explosives, gasoline, combined chemicals; and we have been instrumental in getting the Federal Government, through the Interstate Commerce Commission, and through the Bureau of Steamboat Inspection, to draft suitable regulations to better control this type of traffic, and to reduce the hazards; and we have had members of our staff given an opportunity of assisting in the framing of those regulations.

440. Recently, there has been legislation by Congress permitting so-called free ports, or tariff zones, to be established under the direction or authority of the Secretary of Commerce. Municipalities within the Port District have asked the Port Authority to make studies of several of the potential locations for such free ports or

tariff zones, and such studies have been made, under my direction and supervision. The Mayor of the City of New York, the late Mayor of Elizabeth, and the Mayor of Newark, have all asked at different times for the assistance of the Port Authority in surveying for them the possibilities of establishing one of these foreign trade zones within their respective communities. The Bureau of Commerce, under Mr. Hedden, under my general supervision, has made these three studies, which have been transmitted to the mayors. In the course of these it was necessary for us to do a great deal of field work interviewing—not only inspecting the sites, gathering data as to the cost of constructing new facilities at these sites, or improving the existing facilities, but surveying the potential traffic possibilities with steamship lines and representatives of industry throughout the Eastern portion of the United States. We have even had an investigator on the road as far west as Chicago for several months, trying to dig up information on this subject.

The cities did not pay anything toward this study which the staff made for them at their request. That was all financed and paid for by the Port Authority. And the factual data was made use
 441 of by the City staff in its application to the Secretary of Commerce for the license or certificate. The same situation applies with regard to work on free ports for New York City, Elizabeth, and Newark. We are not by law required to make a study like that if we are requested to do so by any of the municipalities within the Port District. It is entirely a matter of policy with our Commissioners; except that we are charged, in general terms, under the Compact with aiding and advising with local municipalities in the development of their port facilities. To that extent, we feel that we have an obligation to assist them; but there is no legal requirement whereby they can call upon us to spend money.

The MEMBER. Well, I suppose that means, then, that you have to use your own judgment as to whether this is one of the things that the Compact requires you to be cooperative about?

The WITNESS. Whether it is within the general field.

The MEMBER. If they ask you to do something, and you decide that it is not something which is within the general function of the Port Authority, you would not have to do it, and I suppose you would be under a duty to refuse to do it, would you not?

The WITNESS. That is the function of the Commissioners of the Port Authority, to make determinations upon each request.

Mr. BRABSON. Don't you get paid for any of those studies?

The WITNESS. I don't recall that we have gotten any money
 442 out of any local municipality for any studies we made for them. We made a great many.

Mr. COHEN. I call your Honor's attention to this sentence in Section 8 of the legislation dealing with the Comprehensive Plan, occurring at page 44 of the Port Authority Statute Book (Stipulation Exhibit E): "It (referring to the Port Authority) shall render such advice, suggestion, and assistance to all municipal officials as will per-

mit all local and municipal port and harbor improvements, so far as practicable, to fit in with said Plan. All municipalities within the district are hereby authorized and empowered to cooperate in the effectuation of said Plan, and are hereby vested with such powers as may be appropriate or necessary so to cooperate."

Is your department actually in cooperation with municipal officials throughout the district?

(The Witness resumed his testimony as follows:)

From time to time yes—with the municipal officials of the City of New York, the City of Newark and with other cities within the port district. We are in conference from time to time with the Borough President of Manhattan, with reference to highways. We have had conferences with the City about the West Side Highway along the west side of New York, with a view to integrating the Midtown Hudson Tunnel approaches with that highway. We furnished them with a great deal of data and some suggestions and advice on that subject. It is a fact that the City, having a plan for a vehicular tunnel across the Island of Manhattan, from 38th
443 Street, the approaches for the Midtown Hudson Tunnel have been so laid out that they will fit in with the City's plan for its tunnel. That was done in a cooperative way with representatives of the City and our engineers working together.

Mr. COHEN. Now, as a matter of fact, will you say, in the light of your study of the work done before you came with the Port Authority, and the work that you have done since, that the only way that you can get a coordinated system of rail, water, highway, and motor truck transportation within this port district, is by just that method of cooperation?

Mr. BRABSON. I object to that question as leading, purely for a conclusion, both of law, and the opinion of the witness on the subject.

Mr. COHEN. He is an expert, sir. I have the right to ask for his opinion.

The MEMBER. The question is whether a man with the experience that this witness has had, can throw any light upon the nature and character of the operations of this organization by stating what has been asked him, or stating what he has been asked to state. Now, it is not a conclusion. It is what his opinion is.

The WITNESS (having been directed to answer): Yes. There has to be such cooperation, and, above all else, there has to be some agency to bring it about, because cooperation in so vast an enterprise as this, and over such a large area, and with so many different governmental jurisdictions, involves not only state, municipal, county, but also Federal cooperation. And, with so many private in-
444 terests, unless there is some agency that is in a position to try to bring about a meeting of the minds between all of these different units, the problem is practically a hopeless one. Each one has its own particular interest to protect. Each one has its own ideas, which are frequently divergent, and the Port of New York Authority, if it does nothing else, at least provides a strictly neutral,

impartial, and open-minded forum and agency for trying to bring these various conflicting elements into a common concept and understanding of our port transportation problems.

When we have held public hearings, it is not infrequent to have the various sections of the port appearing, opposing each other before the Port of New York Authority. I would say that we have that upon every project that comes up—divergent opinions. There is always a minority interest which feels that something should be done differently from the way that it is proposed to have it done. But it is always a minority opinion.

The MEMBER. Those divergencies are divergencies arising from interests rather than mere divergencies of opinion on abstract questions, aren't they? The impression that I get from your statement about that is that all of these places and communities have their several interests at stake, and that the divergencies that are manifest in these hearings are divergencies that grow out of the desires of each community to protect what it regards as its practical interest—and not merely a divergency as to the scientific formulation of the unified problem; is that correct?

The WITNESS. That is correct.

445 Now, I will straighten this out, and just to illustrate this, in the case of the Greenville-Bay Ridge Tunnel, where after exhaustive studies, extending over many years and conferences with the railroads, we agreed on a general route between Greenville, Jersey City, and Bay Ridge, South Brooklyn. When we held a public hearing on it on September 10th last, individuals, one or two, came in and suggested that the tunnel be located somewhere else, so as to go through the neighborhood that they were interested in. People from the Red Hook section of Brooklyn wanted the tunnel put up there. People from Staten Island wanted the tunnel put down on Staten Island. None of them objected to the tunnel; they wanted it to go through their back yards.

We have had the same experience with the location of Inland Terminal No. 1. There were different people who had different ideas as to where it should be. We finally, after weighing all the different claims, selected the site that met the majority approval.

Mr. COHEN. My attention has just been called to the matter of pier storage. If you would briefly tell his Honor what steps were taken by the Port Authority, through your Department, how the initiation came about which finally resulted in the legislation that has been passed by New York State, which appears in Chapter 711, Laws of New York, 1925, in the Supplement to the Port Authority Statute Book, at page 37 (Stipulation Exhibit E). How did they start, how was it brought to your attention, how did you come
446 to phrase and formulate these regulations, and how did you come to apply to the State of New York and the State of New Jersey for this legislation?

The WITNESS. Some three or four years ago we received a number of complaints from shippers and receivers of steamship

freight in the Port of New York that they were suffering delays in their freight and added expense for trucking and for handling the freight on the docks by reason of congestion of these steamship piers, due to the practice of some of the steamship lines of holding freight off the ships for protracted periods of time on these docks. We were asked if we could help relieve conditions, and we sent our investigators to study the situation, and we found that in some cases, principally on competitive freight routes, such as a route where there would be a number of steamship lines running on the same trade route, and there was a highly competitive situation such as obtains between the Atlantic and Pacific companies through the Panama Canal, that these steamship companies were allowing the freight that came off their ships to lie on their docks for periods of a month, two months, three months, we even found one shipment that was there over a year without any charge being made to the consignee for storage. Supposedly they had an agreement among the steamship lines that they would allow so much free time on the dock after the ship was unloaded. The railroads had that practice as well at all their stations.

The instances of this were brought to our attention three or four years ago. The investigation disclosed that the condition was
 447 brought about by competition, that no one line was able to force a consignee to take his freight off of their docks at the expiration of an arbitrary ten day free time period, because the consignee would immediately shift his patronage to a competing line that would give him more favorable concessions, and so as the lines gradually extended their free time to ten days, to three weeks, and to from three weeks to a month, etc., the practice had just grown up of practically disregarding the free time provision and leaving it there as long as the merchant wanted it. And he wanted it because it saved him having to truck that freight off the piers to a warehouse and pay warehouse charges. He would get in a large shipment of coffee from the south, some ten thousand sacks, and he could peddle that out to the trade by using the pier as a storage facility. Of course, that added to expense all along the line; it increased the fire hazard, it carried increased insurance rates on cargoes, and it involved some losses where fires occurred on some of these piers, and there immediately was a conflict of opinion between the Underwriters and the owners of the freight as to whether the freight in question was still carried on an ocean bill of lading or not. Our study of the situation found an attitude on the part of the steamship people that they would be very glad to have some regulations imposed by the Port Authority that would enable them, that would be uniform in character for the different piers of the Port, and some machinery for forcing the lines to live up to it.

We had several conferences with the lines as to what form
 448 that regulation should take. We made several drafts of the proposed regulations as to the length of time and how we would enforce it, and the machinery for inspection by our inspectors

at frequent intervals of the piers and records to see that the rules were being lived up to; and then we found when we had the regulations in print, in good shape, that some general enabling legislative authority appeared necessary to give us more specific authority to prescribe the specific rules and regulations. Under our Compact, in a general way, we may make rules and regulations, but before they become binding, they have to be returned to the legislatures for approval by those bodies. We then prepared companion bills carrying into effect the recommendations that we had worked out with the steamship companies, submitted those to the legislatures at Albany and Trenton, with the idea that when approved by them, we would also submit them to the Federal Government for approval. The New York Legislature passed its bill last year, and the New Jersey bill, I think, passed one branch of the Legislature, but did not pass the other before the Legislature adjourned.

This was brought about at the initiation of the Warehousemen's Association. The warehousemen joined with the receivers in asking relief. They not only asked us to do it, but they even carried the case to the United States Shipping Board. The case has been pending there for about a year, I should say, and they are waiting to see what we are able to work out here, the Shipping Board's attitude apparently being, "Well, if you can solve this problem locally in the Port of New York by your own regulations, 449 that may suffice for practical purposes."

The MEMBER. What is the Warehousemen's Association?

The WITNESS. It is one of these trade associations formed by the owners of warehouses in the Port of New York.

The MEMBER. What was their interest in it?

The WITNESS. They wanted freight moved off the steamship piers, so it would move into their warehouses, and they would get the rental.

The MEMBER. Was the Bush Terminal Company included?

The WITNESS. They are a member of the Warehousemen's Association, yes.

The MEMBER. Well, is this the same problem that you were saying, that the steamship companies were interested in? In having some regulation that would enable them to clear their piers?

The WITNESS. That is right.

The MEMBER. You got the cooperation of the Warehousemen's Association, who also wanted to clear the steamship company's piers?

The WITNESS. The warehousemen were very anxious to clear the steamship companies' piers, yes.

Mr. COHEN. I haven't covered the intervention of the Port Authority in I. C. C. cases, and what your department does in that. Give the court some indication of the nature of these cases and their number generally, so that he can see what our activities have been there.

The WITNESS. Actions frequently arise before the Interstate 450 Commerce Commission and Shipping Board brought by other ports to obtain more favorable rate adjustments than they

now have in relation to the rates of the Port of New York. One of our fields in protecting the commerce of this Port has been to resist such attempts to divert commerce from the Port by participating in these hearings and collecting and offering evidence on behalf of the Port of New York to combat the attempts of the other ports. We have, on the average I should say, five or six or seven or eight of those cases a year; some are very large cases. There is a case going on, which is a consolidation of two or three cases from the Gulf ports, working with the north and south rail lines in the Mississippi Valley, where they have been trying to divert a great deal of export and import traffic to Europe and to Africa, that formerly flowed through the North Atlantic Ports and the Port of New York, by getting more favorable rates out of the Mississippi Valley Lines for such commodities as automobiles moving out of Detroit and the Chicago territory. We have had to prepare evidence, submitted through our Bureau of Commerce, and Mr. Heddon in those cases. We have Shipping Board cases involving ocean rates and ocean practices brought by some of the out ports against the activities of steamship lines here that compete with the outports. We have had efforts made to merge New York Shipping Board lines with lines operating out of some of the smaller ports, and transfer the whole operation to the out port under the guise of economy, and letting the smaller ports swallow the bigger lines.

451 Well, those activities come under our mandate from the two states to protect the Port of New York commerce, and we feel that it is right and proper that we should indulge in those, and we do it, and it involves a great deal of work in assembling work and cooperating with the local municipalities, who have an interest in it because of their investments in their docks; if the trade of New York suffers the returns from their dock properties will suffer.

The MEMBER. Who did that before the Port Authority was organized?

The WITNESS. It wasn't done in any satisfactory way, with due modesty and humility, and that is the reason, I think, that New York enjoys so many handicaps of long standing. Such proceedings before the Port Authority was organized were few and far between.

The MEMBER. Well, when there were those few, who undertook to protect, if I may use that word, what is regarded as the interests of New York Harbor, for example, as against the attack of Boston and Philadelphia and Baltimore?

The WITNESS. Well, in the smaller cases, they usually arrive through the province of an individual industry, and the traffic managers of that industry will be opposed to the traffic managers of the railroads, but that industry case on one commodity will set a precedent for a rate adjustment that will affect many commodities.

The MEMBER. Well, do you participate in cases that involve the rate on a particular commodity?

The WITNESS. Only if it involves a principle that affects a large port rate adjustment, entirely inverted cases, that is only in certain cases.

452 As the cases increased in importance and magnitude, agencies like the Chamber of Commerce and the Produce Exchange and the Maritime Exchange and bodies like that, have come in to it in the past, and in the largest cases, such as the New York Harbor case—where New Jersey was seeking a rate adjustment lower than New York—even the states and municipalities have come into the picture.

The MEMBER. Now, that is what I wanted to find out. Now, that having been so in the past, you say that now the Port Authority undertakes the representation of the Port of New York. Does the representation of the others still continue, or are you now in substitution for them?

The WITNESS. No; they still continue to cooperate with us, and they appear as parties to many of our briefs and we to theirs.

Mr. COHEN. Your Honor will note that before the creation of the Port District and the making of the Port Compact, there was no port as a whole, and hence the necessity for having a single agency.

The MEMBER. I know that there were controversies of long standing.

Mr. COHEN. Oh, yes.

The MEMBER. As between Baltimore, Philadelphia, New York, and Boston.

Mr. COHEN. That is right.

The MEMBER. And where you speak of them as the Port as a whole, it did affect those who were interested in the Port of New York. Now, what I am seeking to find out is whether in such
453 controversies, assuming that there were some, that there have been some since the Port Authority's organization as there were before, whether the Port Authority is in substitution for, say, the State of New York, or the City of New York, or the New York Produce Exchange or others, or merely supplements their efforts; that is what I want to understand.

Mr. COHEN. It coordinates their efforts.

The WITNESS. Yes; it functions in various ways; as I said earlier, it is a good coordinating agency; it brings the various parties together. If we have a rate case of this kind, we will call in representatives of these different agencies around the table, and we will discuss the procedure to be followed, and the evidence that each can adduce, and because of our studies over a long period of years, collecting data in the port on freight traffic and tonnage and rate situations, we have developed a mass of information that is very useful in these proceedings, which these other trade organizations and local governmental bodies don't have, and which it would take them a very long time and a great deal of expense to assemble, and which we have assembled by virtue of our other activities, and that

is how we contribute something to this process. We do not in any way attempt to supplant these organizations. We speak for them; we invite them to cooperate with us in these cases. As a matter of fact, there has been litigation before the Interstate Commerce Commission in which interests in New Jersey were allied against interests in New York, and each appeared by their own separate counsel, and the Port Authority intervened merely with reference to the Port as a whole.

454 Mr. COHEN. I call your Honor's attention at this time to the provisions of Article 13 of the Compact, page 22, the Port Authority Statutes; "The Port Authority may petition any Interstate Commerce Commission or like body, the Public Service Commission, Public Utilities Commission, or like body, or any other Federal, Municipal, State, or local authority, administrative, judicial, or legislative, having (jurisdiction in the premises after adoption of the Comprehensive Plan as provided for in Article X, to the adoption and execution of any physical improvement, change in method, rate of transportation, system of handling freight, warehousing, docking, lightering, or transfer of freight which in the opinion of the Port Authority may be designed to improve or better the handling of commerce in and through said District, or improve terminal or transportation facilities therein. It may intervene in any proceeding affecting the commerce of the Port."

And in Section VIII of the Comprehensive Plan, at page 43 of the Statute Books, it says this; "* * * power to apply to all Federal agencies, including the Interstate Commerce Commission, the War Department and United States Shipping Board for suitable assistance in carrying out said Plan."

The MEMBER. What is your position?

The WITNESS. Assistant General Manager in charge of operations and development. The General Manager is Mr. John E. Ramsey. We have a General Manager and two Assistant General Managers.

There is Mr. Mulcahy, who was to have been called but has
455 now been relieved. My department has a number of separate divisions and division heads under me. Division heads are the Chief of the Bureau of Commerce, General Superintendent of Bridges, Superintendent of Tunnel Operations, Superintendent of Maintenance and Inspection, and Police Consultant.

My testimony so far deals with that part of my department which has to do with the development and effectuation of the Comprehensive Plan. The department heads in charge of the operating work, the bridges and tunnels, also report to me. We have police assigned to each of our facilities. They total about 300. As to their organization, on the Holland Tunnel we have two captains of traffic, and they have lieutenants and sergeants under them. On the George Washington bridge we have one captain with sergeants under him. On the Staten Island bridges we have a superintendent who acts as a captain, and he has assistant superintendents who act as lieu-

tenants, and they have sergeants under them, and the men report to the sergeants on each shift. They are all uniformed men, except the captains, superintendents and the assistant superintendents.

Mr. COHEN. I direct your attention to one of the sample provisions of the Statutes governing bridges, Section 3 of Chapter 97 of the Laws of New Jersey, page 116; "The Port Authority is authorized to make and enforce such rules and regulations and to establish and levy such charges and tolls as it may deem convenient or necessary for the operation and maintenance of the said bridge and to insure at least sufficient revenue to meet the expense of the construction, operation, and maintenance thereof, and to make provision for the payment of the interest upon and amortization and retirement of such bonds or other securities or obligations as it may issue or incur for the purposes of this Act as hereinafter provided."

Pursuant to those provisions in the various Statutes, has the Port Authority made and enforced rules and regulations?

The WITNESS. We have.

Mr. COHEN. Has it established and levied such charges and tolls?

The WITNESS. We have.

Mr. COHEN. How are the rates of tolls arrived at in order to comply with the provisions of the statutes?

The WITNESS. The staff under my general supervision makes an analysis of the available volume of traffic that we expect for one of these facilities, and we work out what seems to us a reasonable toll schedule for the different classes of traffic, with due regard for the rate paid on other facilities which we operate and we recommend to our Commissioners what we think the level of charges should be. The Board studies our reports, figures and the Commissioners fix the level of toll rates, and we enforce those on our facilities. It is the same way with the traffic regulations; we will have conferences in my office with our police consultant, our superintendent, our captains, and we discuss the experiences that we have and the difficulties that we have in handling traffic at any particular point, and that will give rise to a desired regulation which we then submit as a recommendation to the Commissioners and they promulgate them.

457 (The witness continued his testimony as follows:)

It was the result of studies in my department that led to the penal provisions of the laws in New York and New Jersey that appear in these statutes. (Stipulation, Exhibit E.) As to the method of caring for the violations: Our police officers are all peace officers in both States, New York and New Jersey, with the usual powers of a police officer to make summary arrests for misdemeanors committed in his presence, and felonies committed in his vicinity, and our men will either make summary arrests or will issue summonses, issue summons tickets to motorists as the particular situation seems to demand. We try to facilitate our patrons as much

as possible by not making life too hard for them, because after all we have got to encourage them to come on our properties, and where we can we issue summonses which are returnable at a future date in one of the local police courts where our men appear as complaining witnesses for a violation of our regulations.

Mr. COHEN. I call your Honor's attention to pages 216 and 217 of the Port Authority Statute Book (Stipulation, Exhibit E), Chapter 388 of the Laws of New York, 1928, Section 154 of the Code, the New York Code, headed "Who are peace officers." And in the long list of peace officers, after describing the sheriff, constables, and marshals and policemen of a city, town, or village, appears the following, "Or a patrolman, officer, or other member of the police force appointed by the New York State Bridge and Tunnel Commission and the New Jersey State Bridge and Tunnel Commission in the administration of the Holland Tunnel or of the police force appointed by the Port of New York Authority upon any of its bridges now or hereafter authorized to be built and/or operated by it, who is a resident of the State of New York."

(The witness resumed his testimony as follows:)

There is a constant request upon us to reduce our rates. Those requests have been given consideration frequently, given careful study from time to time by the staff under my general direction. We analyze our traffic, we analyze our revenues, we analyze our operating expenses and our debt charges for the purpose of seeing whether it is possible to make any of these reductions and still meet all of our expenses, and at the rate we are going so far it has not been possible for us to recommend to our Commissioners that any reductions be made, for we are just making enough to meet all of our charges and our expenses.

Mr. COHEN. Well, is the policy of the Port Authority and your staff to make a profit out of the operation of these facilities or is it the policy to operate them at the lowest possible tolls or charges consistent with the protection of the bondholders as required by the Statutes?

The WITNESS. We don't aim to make a profit; we merely aim to pay our interest charges, and to pay back the money that we have borrowed, and that is all that we try to get from our level of toll rates. The legislation which has declared in both States that all the bridge and tunnel crossings should be treated together has had the following effect on the fixing of tolls on any particular bridge or tunnel:

In a general way we have treated these facilities as a unit, with the recognition that on the Hudson River, for example, it does not appear practical to have a different level of toll rates on neighboring facilities, because of the burden it would throw upon the facility with the lowest toll rates; so the rates have been kept practically uniform. In Staten Island, where we have got a different situation, we have established some so-called commutation rates on a monthly

basis, for the purpose of developing business, but we have not established any such rates on the Hudson River.

The fifteenth floor of the Port Authority building is occupied wholly by the Port Authority, with the exception of a minor portion held by the Triborough Bridge Authority, a public agency building the Triborough Bridge. In that space are the public hearing room, the Legal Department, the Engineering Department, and others.

Mr. COHEN. I will read into the record these parts of the stipulation which I understand will not be contested, so as to save time: "Upon entering the Port Authority's employ, Mr. Wilson took an oath of office. Mr. Wilson was required to submit monthly time reports, itemizing the number of hours worked in each day, and the number of hours worked each day over and above the seven standard hours. His duties were prescribed by the general manager of the Port Authority, to whom Mr. Wilson was required 460 to submit reports on such matters, as the general manager from time to time required. All of his duties brought Mr. Wilson under the immediate and direct supervision of the general manager of the Port Authority, and on occasions when Mr. Wilson differed with the general manager on matters that involved operation or other matters within the scope of his employment, he was directed to proceed in accordance with the direction of the general manager. Mr. Wilson was furnished with an office by the Port Authority, and in the Port Authority's general offices. He was supplied with all necessary supplies and materials by the Port Authority. His office force, stenographers, and personnel of his staff engaged in the various activities under Mr. Wilson's direction, were supplied by the Port Authority, who were regular employees of the payroll of the Port Authority. Traveling expenses and other expenses incurred by him in connection with the performance of his duties were paid by the Port Authority. Mr. Wilson had no outside office, no outside business connection or association of any kind whatsoever during the year 1933. He received no outside income during the year 1933 except such as was received from securities and investments owned by him. His name appeared on the payroll of the Port Authority, and he was required to sign that payroll, as were all employees of the Port Authority. He is a resident of the County of Bronx, City and State of New York."

I should like to read at this time, so that we can dispose of it, the facts with regard to Mr. Mulcahy, which are stipulated:

461 "The petitioner above named was during the year at issue and ever since has been an employee of the Port of New York Authority. During the year 1932 Mr. Mulcahy was employed as an assistant general manager of the Port of New York Authority and received a salary of \$10,950 for that year.

"Mr. Mulcahy's employment has continued from June 1, 1928, to the present date. On entering the Port Authority's employ, Mr. Mulcahy took an oath of office. It was understood that Mr. Mul-

cahy was to be at the office of the Port Authority, New York City, on each and every working day from nine a. m. to five p. m., and from nine a. m. to twelve noon on Saturday, the normal working hours of all Port Authority employees, except, of course, on such occasions as his Port Authority duties might require his presence elsewhere. It was agreed that although generally the petitioner would be required to devote only the above mentioned hours to the Port Authority duties, he would, whenever necessary, devote such extra time to his duties as might be required without any extra compensation. As a matter of fact, Mr. Mulcahy's duties as assigned for the year 1932 constantly required his presence at the offices of the Port Authority at hours other than and in excess of the normal working hours of other Port Authority employees. As assistant general manager in charge of administration, Mr. Mulcahy's duties as assigned for the year 1932, involved the supervision of the entire personnel of the Port of New York Authority. He was the
 462 administrative assistant to the general manager, and as such assistant was engaged in all phases of the work of the Port Authority in the execution of the Compact, the Comprehensive Plan, of the various statutes amendatory thereof and supplementary thereto. His duties were prescribed by the general manager of the Port Authority, to whom Mr. Mulcahy was required to submit such reports on such matters as the general manager from time to time required. In all of his duties Mr. Mulcahy was under the immediate and direct supervision of the general manager of the Port Authority, and on occasions when Mr. Mulcahy differed with the general manager in matters involving administration or other matters within the scope of his employment, he was directed to proceed in accordance with the direction of the general manager. Mr. Mulcahy was required to submit monthly time reports, itemizing the number of hours worked in each day, and describing the work performed, the number of hours spent in connection with each type of work, and the number of hours worked each day over and above the standard seven hours. Mr. Mulcahy was furnished with an office by the Port Authority, and in the Port Authority's general offices. He was supplied with all necessary supplies and materials by the Port Authority. His office force, stenographers, and personnel of his staff engaged in the various activities under Mr. Mulcahy's direction, were supplied by the Port Authority, and were regular employees on the payroll of the Port Authority. Traveling expenses and other expenses incurred by him in connection with the performance of his duties, were paid by the Port Authority.
 463 Mr. Mulcahy had no outside office, no outside business association or connection of any kind whatsoever during the year 1932. He received no income whatever during the year 1932 except compensation paid him by the Port Authority. Mr. Mulcahy's name appeared on the payroll of the Port Authority, and he was required to sign the payroll, as were all employees of the Port

Authority. He is a resident of the City, County, and State of New York."

Cross examination by Mr. BRABSON:

The WITNESS. There are about 300 police on the Port Authority's staff in round numbers. It has in all departments slightly in excess of 1,000 employees. Certain of our men are loaned to the Tri-Borough Bridge Corporation on a contract basis. By this I mean on a part time, part salaried basis. The Tri-Borough Bridge Corporation pays them a salary and we pay them a salary, and they work part time for each; that is my understanding of it; I have no such men in my own department. I am not very familiar, in fact I am not familiar with any of the details of these arrangements; they are made by men in other departments, except I know in a general way that there are some such arrangements.

The Port Authority neither owns nor operates any facilities other than those which are reported in its annual reports that I know of. It neither owns, leases, nor operates any piers, docks, wharves, ferries, tug boats, ferry slips, nor dredges. It has no pier terminals 464 in a strict sense. It does own this Inland Terminal No. 1 which is a substitute for pier terminals.

The Port Authority has never dredged a channel. It does have in its activities and has taken part in the matter of harbor sanitation and pollution. We have gone into some studies of that subject with representatives of the States and have advised with representatives of local municipalities, county officials, on the questions of sanitation and harbor pollution. The Port Authority has cooperated with other agencies issuing rules for navigation and commerce, in helping them formulate the rules to be issued. It has of its own authority issued rules or regulations affecting navigation only in connection with navigation around some of our own facilities, where there might be damage to them during construction. In such cases we have put up certain restrictions during construction.

As to rules and regulations with regard to commerce as contrasted with navigation, we have issued regulations affecting the movement of commerce, over all our facilities and all of our highways—all of our motor vehicle rules for motor trucks and busses, the regulations for trucking, the regulations for trucks entering our building, etc. Those are all commerce regulations which we have issued pursuant to law. They are solely in connection with the traffic using our facilities.

The Port Authority has improved certain docks and pier facilities. When the Holland Tunnel was built by the predecessor Commission of the Port Authority, certain pier properties were destroyed, 465 old piers, and we built over the Holland Tunnel on each side of the Hudson River new piers, new modern steel and concrete piers that are in use today by steamship companies. In the

case of the Midtown Tunnel likewise on the New York side before that is completed we will construct a new and modern pier at that location.

The pier that we rebuilt was not solely in connection with the protection of the Holland Tunnel but was to replace a pier that was destroyed by the construction of the Holland Tunnel, with a better pier and a more modern one. That pier belongs to the City of New York on the New York side and to the Erie Railroad on the New Jersey side. In other words we replaced a facility which we had to remove for construction purposes.

Mr. BRABSON. Has the Port Authority established any lighthouses or buoys?

The WITNESS. We have constructed lights, we have erected navigation lights, if by lighthouses you mean all the illumined aids to navigation. We have lighted buoys or a lighted beacon on shore to assist the ships. All that is in the general category of a lighthouse, if that is what you mean, we have done that.

All of these navigation lights are on our bridge facilities, to assist navigation. We have not established any lights otherwise than in connection with our facilities. The Port Authority has no buoys, has established no channel markings, except in connection with its facilities; and the Port Authority owns no lighters or car floats, no tugs, barges, scows, or harbor craft of any kind.

With regard to the so-called underground electric system, it 466 has not been abandoned. The construction of this first Inland

Terminal was an element of the whole system. When the automatic electric system was planned it was to run into the basement of these inland freight stations, and the system was a system as a whole—tracks, cars, and terminals. Now we have constructed the terminal portion in part of that automatic electric system. We have not constructed the tunnel portion of the system. As a measure of quicker relief, which our Compact calls upon us to provide, we have these alternates in the Midtown Tunnel, the George Washington Bridge and the Holland Tunnel for the movement of commerce to and from the station.

In hearings before the Interstate Commerce Commission the Port Authority has not appeared repeatedly in opposition to municipal bodies. In some cases it has appeared in opposition to railroads and other transportation facilities; in other cases we have supported the railroads' position.

The Port Authority has attempted to fix rates for lighterage in the harbor district but only through negotiations with the railroads. There are as far as the railroads are concerned no rates for lighterage; lighterage is performed as a part of their general terminal service, the same as switching on land, and most of the lighterage freight of the railroads is handled without any charge for it as a part of the through movement.

A large percentage of the waterfront on Manhattan Island is owned by the City. South of 59th Street, which is the section we have studied mostly, the City owns in excess of 95 per cent. ♥

467 Some of the pier facilities on this waterfront are leased to railroads by the City; some the City leases to steamship companies; other facilities it leases to private terminals, such as coal yards, sand yards, and things of that kind, and some of the property of course is owned by the State. There are some private holdings. Some of the City properties are not leased at all but are used as open docks and paid for on a kind of toll or fee basis. In some cases I think at least this condition used to exist a few years ago, unless it has been changed, the City would lease land under water and let private parties build their own facilities on it. The City leases waterfront property upon which the railroads and other parties build ferry terminals.

(At Mr. Brabson's request the witness indicated on a map the location of the Lackawanna ferries in relation to the Holland Tunnel.)

The Lackawanna ferries run from Hoboken across to Barclay Street which is about one mile away from the Holland Tunnel. There is another Lackawanna ferry that comes across to Christopher Street, the Christopher Street ferry is about three quarters of a mile from the Holland Tunnel. There are no ferry companies operating in close proximity to the Holland Tunnel; I would say that the Lackawanna ferry is the nearest.

Other ferries operating in that vicinity are those of the Pennsylvania Railroad, Central Railroad of New Jersey, and the Erie Railroad which are further down town in the vicinity of Cortland
468 Street, and further up town in the vicinity of 23rd Street, which is over two miles from the Holland Tunnel. Pennsylvania ferries are probably something over a mile from the Holland Tunnel. There are no ferries operating in the vicinity of the George Washington Bridge. The Dyckman Street Ferry is about two miles north of that bridge. That ferry has for years suspended operations every winter during the ice season because of the heavy ice floes in that portion of the river, but it has resumed operations every summer and has continued to run every summer.

As to the allocation of space in the Inland Terminal, the ground floor and basement are leased by the Port Authority to the several railroads under a lease to which all the user railroads are signatory, so that it is leased to them jointly and they operate the space. How they allocate it to themselves, or if they make any allocation at all, I do not know. I have seen certain railroad signs on the outside of the building put up by the railroads for their own convenience on their leased premises. They have nothing to do with the Port Authority, that is an integral part of their own activities.

Prior to the erection of the Holland Tunnel there were no other vehicular bridges or tunnels under the Hudson River. There were, however, certain railroad tubes under the Hudson River. The Pennsylvania Railroad had two single track tubes in the vicinity of West 32nd Street, and the Hudson and Manhattan Railroad had two single track tubes near Christopher Street and two tubes near Cortland Street. There were six railroad tubes prior to the erection of the Holland Tunnel, that is, three systems of two tubes each. There were no vehicular tubes. The railroad tubes were all passenger facilities, without handling any freight.

All of the new streets which the Port Authority has constructed are either in connection with our own facilities or are approaches leading to the facilities, but they are not directly connected with it except through intervening streets and other ramps and channels. They were not exactly built for the benefit of our facilities; they were built to facilitate the commerce of the port. You see some of them are a mile away from our facilities and they are not used exclusively by tunnel or bridge traffic; some of them handle as much as 25 per cent of traffic that does not use our facilities and from which we get no revenue. They are built only partially because of the additional traffic that would come to our facilities. You must understand that this movement of traffic is a very complicated thing; at the same time it is very simple, it follows the lines of least resistance, and as soon as we build a new facility and build a new concrete street, with nothing but cobblestone streets on either side, all local traffic in that territory will use that new improved highway that we built, even though it is not tunnel or bridge traffic.

The Port Authority does not own any part of any belt line in the Port district having to do with railroads. The nearest railroad facilities on the New Jersey side of the proposed Greenville Bay Ridge tunnel which we propose to build are the Pennsylvania's terminals, although the Lehigh Valley's terminals are immediately adjoining. On the New York side the present rails are owned by the Long Island Railroad, which is considered the Pennsylvania and used by the New Haven and the Long Island engines. (The witness was excused.)

Mr. COHEN. I should like to call your Honor's attention, in view of the questions that were asked of Mr. Wilson concerning sanitation, to Article 22 of the Port Authority statutes, the article dealing with definitions and to the definition of a rule or regulation: "Rule or regulation until and unless otherwise determined by the legislatures of both states, shall mean any rule or regulation not inconsistent with the constitution of the United States or of either state, and subject to the exercise of the power of Congress for the improvement of the conduct of navigation and commerce within the district, and shall include charges, rates, rentals, or tolls fixed or established by the Port

Authority and until otherwise determined as aforesaid, shall not include matters relating to harbor or river pollution."

We, sir, have always interpreted that to mean a limitation upon our power to make rules and regulations, dealing with sanitation, but not as a limitation upon the general powers to deal with all port and harbor conditions. May I state, for your Honor's information, that there has been an inclination on the part of both states
471 to treat the harbor and pollution problem as a separate problem, and that is being solved at the present time by a separate compact dealing with harbor pollution.

Whereupon both sides rested.

Counsel for the taxpayers then made a closing statement for the petitioners. Closing statements and expositions of law and facts were made for the respondent by Mr. Uriell and Mr. Brabson.

The petitioners submitted their trial brief and respondent was given 45 days within which to answer, and the petitioners were given 30 days thereafter within which to reply.

Whereupon the hearing was concluded.

The foregoing evidence included all of the exhibits filed by the parties in evidence at the hearing before the Board of Tax Appeals constitutes all of the material evidence herein, and the same is approved by the undersigned, Morrison Shafroth, Chief Counsel, Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

MORRISON SHAFROTH,
Chief Counsel,
Bureau of Internal Revenue.

Approval of statement of evidence by counsel

The foregoing evidence including all of the exhibits filed by the parties in evidence at the hearing before the Board of Tax Appeals constitutes all of the material evidence herein, and the same is approved by the undersigned, Julius Henry Cohen, General
472 Counsel for The Port of New York Authority, as attorney for the respondents on review.

(Signed) JULIUS HENRY COHEN,
General Counsel for The Port of New York Authority,
Attorney for respondents on Review.

Order settling statement of evidence

This statement is duly approved and settled this 23rd day of July 1937.

(Signed) J. M. STERNHAGEN,
Member, United States Board of Tax Appeals.

473 In United States Circuit Court of Appeals for the Second
Circuit

B. T. A. No. 77375

B. T. A. No. 77377

B. T. A. No. 80769

[Titles omitted.]

Order for consolidation

Upon consideration of the joint motion of the parties to the above
entitled causes, and it appearing to the satisfaction of the Court that
the motion should be granted, It Is, by the Court, this 15th day of
July 1937, Ordered:

474 (1) That, for purposes of record, briefing, hearing, argu-
ment, and decision, the three causes as captioned hereinabove
are consolidated and are to be heard upon a single printed record
consisting of such documents as the parties have indicated by Prae-
cipe for Record, and

(2) That the Statement of Evidence in these causes be printed
but once in the Transcript of Record on review, and that, so printed,
it is to be taken and accepted as and for a Statement of Evidence
in each of the causes captioned herein, and

(3) That all exhibits called for by the Prae-
cipe for Record herein are to be transmitted in physical form by the Clerk of the
United States Board of Tax Appeals to the Clerk of this Court and
by him held until the hearing herein, and then produced for the
aid of Court and counsel.

And it is further ordered that the Clerk of this Court transmit
a certified copy of this Order to the Clerk of the United States
Board of Tax Appeals, which certified copy is to be included by him
in the record on review herein as transmitted.

By the Court,

(S) MANTON,
United States Circuit Judge.

PEW-GA 7-9-37.

A true copy,

[SEAL]

(S) WM. PARKIN, *Clerk.*

475 In United States Circuit Court of Appeals for the Second Circuit.

B. T. A. No. 77375

B. T. A. No. 77377

B. T. A. No. 80769

[Titles omitted.]

Praecepta for record

TO THE CLERK OF THE UNITED STATES BOARD OF TAX APPEALS:

You will please prepare, transmit, and deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit, copies duly certified as correct of the following documents and records in the above entitled causes in connection with the Petitions for Review by the said Circuit Court of Appeals for the Second Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board:
 - (a) Petition, including annexed copy of deficiency letter, in each of the above cases.
 - (b) Answer in each of the above cases.
 - (c) Commissioner's motion to amend the Findings of Fact in the consolidated case.
 - (d) Commissioner's motion to reconsider the opinion and decision of the Board and to vacate or modify the same to conform to the facts of record.
 - (e) Taxpayers' motion in opposition to amendment of Findings of Fact, including Taxpayers' motion for additional Findings of Fact.
 - (f) Taxpayers' motion in opposition to Commissioner's motion for a reconsideration.
3. Findings of Fact, opinions and decisions of the Board.
 - (a) Findings of Fact and opinion promulgated October 28, 1936.
 - (b) Judgment entered October 31, 1936, in each of the above cases.
 - (c) Order denying motion to amend Findings of Fact.
 - 477 (d) Order denying motion for reconsideration.
4. Petition for Review and Assignment of Error, together with proof of service of notice of filing Petition for Review and of service of a copy of Petition for Review, in each of the above cases.
5. Statement of Evidence as settled and allowed, including the Stipulation of Facts.
6. All Exhibits filed in evidence including both those made a part of the Stipulation of Facts and those filed in evidence during the course of the hearing, are to be transmitted to the Clerk of the Circuit Court of Appeals for the Second Circuit in physical form.

7. Order extending the time for completion of the record and transmission thereof to the Circuit Court of Appeals for the Second Circuit.

8. Stipulation of consolidation of causes on review, and for inclusion in record of but one Statement of Evidence.

9. This Praecept.

MORRISON SHAFROTH,
Morrison Shafroth,
Chief Counsel,
Bureau of Internal Revenue.

Service of a copy of the within proceeding is hereby admitted this — day of —, 1937.

(S) JULIUS HENRY COHEN,
General Counsel of The Port of New York Authority,
Attorney for Respondents.

478 [Clerk's certificate to foregoing transcript omitted in printing.]

480 In United States Circuit Court of Appeals for the
Second Circuit

Nos. 87-89. October Term, 1937

Argued Nov. 3, 1937. Decided Nov. 3, 1937

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

PHILIP L. GERHARDT, RESPONDENT

SAME, PETITIONER

v.

BILLINGS WILSON, RESPONDENT

SAME, PETITIONER

v.

JOHN J. MULCAHY, RESPONDENT

Appeal from the Board of Tax Appeals

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges

Berryman Green, of Norfolk, Va., for petitioner.

Julius Henry Cohen, of New York City, for respondents.

Opinion

Per Curiam.

Orders affirmed in open court on authority of *Brush v. Commissioner* (C. C. A.) 85 F. (2d) 32; *Ten Eyck v. Commissioner* (C. C. A.) 76 F. (2d) 515, and *People ex rel. Rogers v. Graves*, 299 U. S. 401, 57 S. Ct. 269, 81 L. Ed. 306.

481 In United States Circuit Court of Appeals, Second
Circuit

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

PHILIP L. GERHARDT, RESPONDENT

Appeal from the United States Board of Tax Appeals

Judgment

Filed Nov. 10, 1937

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel. On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

WM. PARKIN, *Clerk.*

482 [File endorsement omitted.]

483 In United States Circuit Court of Appeals, Second Circuit

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

BILLINGS WILSON, RESPONDENT

Appeal from the United States Board of Tax Appeals

Judgment

Filed Nov. 10, 1937

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

WM. PARKIN, *Clerk.*

484 [File endorsement omitted.]

485 In United States Circuit Court of Appeals, Second Circuit

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

JOHN J. MULCAHY, RESPONDENT

Appeal from the United States Board of Tax Appeals

Judgment

Filed Nov. 10, 1937

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

WM. PARKIN, *Clerk*.

486 [File endorsement omitted.]

487 [Clerk's certificate to foregoing transcript omitted in printing.]

488 Supreme Court of the United States

No. 779, October Term, 1937

Order allowing certiorari

Filed February 28, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

489 Supreme Court of the United States

No. 780, October Term, 1937

Order allowing certiorari

Filed February 28, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it

is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

490

Supreme Court of the United States

No. 781. October Term, 1937

Order allowing certiorari

Filed February 28, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

(Endorsement on cover:) File Nos. 42260, 42261, 42262. U. S. Circuit Court of Appeals, Second Circuit. Term No. 779. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner, vs. Philip L. Gerhardt. Term No. 780. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner, vs. Billings Wilson. Term No. 781. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner vs. John J. Mulcahy. Petition for writs of certiorari and exhibit thereto. Filed February 10, 1938. Term Nos. 779 O. T. 1937, 780 O. T. 1937, 781 O. T. 1937.

BLANK

PAGE